

General Principles of the Civil Law of the People's Republic of China



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Chapter I Basic Principles

Article 1 This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2 The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3 Parties to a civil activity shall have equal status.

Article 4 In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5 The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6 Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7 Civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8 The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law. The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

Chapter II Citizen (Natural Person)

Section I Capacity for Civil Rights and Capacity for Civil Conduct

Article 9 A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10 All citizens are equal as regards their capacity for civil rights.

Article 11 A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct. A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct.

Article 12 A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem. A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13 A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem. A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14 The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15 The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

Section II Guardianship

Article 16 The parents of a minor shall be his guardians. If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

- (1) paternal or maternal grandparent;
- (2) elder brother or sister; or
- (3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighborhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighborhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling. If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighborhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17 A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

- (1) spouse;
- (2) parent;
- (3) adult child;
- (4) any other near relative;
- (5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighborhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling. If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighborhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18 A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests. A guardian's rights to fulfil his guardianship in accordance with the law shall be protected by law. If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19 A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct. With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

Section III Declarations of Missing Persons and Death

Article 20 If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing. If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21 A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court. Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing

person's property.

Article 22 In the event that a person who has been declared missing reappears or his whereabouts are ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23 Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

- (1) if the citizen's whereabouts have been unknown for four years or
- (2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24 In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death. Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25 A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items no longer exist.

Section IV Individual Businesses and Lease-holding Farm Households

Article 26 "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27 "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28 The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law.

Article 29 The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family.

Section V Individual Partnership

Article 30 "Individual partnership" refers to two or more citizens associated in a business and

working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31 Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32 The property provided by the partners shall be under their unified management and use. The property accumulated in a partnership operation shall belong to all the partners.

Article 33 An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and registered.

Article 34 The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities. The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35 A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made. Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

Chapter III Legal Persons

Section I General Stipulations

Article 36 A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law. A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37 A legal person shall have the following qualifications:

- (1) establishment in accordance with the law;
- (2) possession of the necessary property or funds;
- (3) possession of its own name, organization and premises; and
- (4) ability to independently bear civil liability.

Article 38 In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39 A legal person's domicile shall be the place where its main administrative office is located.

Article 40 When a legal person terminates, it shall go into liquidation in accordance with the law and discontinue all other activities.

Section II Enterprise as Legal Person

Article 41 An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42 An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43 An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44 If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it. When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45 An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or
- (4) for other reasons.

Article 46 When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47 When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48 An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint

venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49 Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) conducting illegal operations beyond the range approved and registered by the registration authority;
- (2) concealing facts from the registration and tax authorities and practicing fraud;
- (3) secretly withdrawing funds or hiding property to evade repayment of debts;
- (4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;
- (5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;
- (6) Engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

Section III Official Organ, Institution and Social Organization as Legal Person

Article 50 An independently funded official organ shall be qualified as a legal person on the day it is established. If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

Section IV Economic Association

Article 51 If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52 If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53 If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

CHAPTER IV Civil Juristic Acts and Agency

Section I Civil Juristic Acts

Article 54 A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55 A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest.

Article 56 A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57 A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58 Civil acts in the following categories shall be null and void:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;
- (5) those that violate the law or the public interest;
- (6) economic contracts that violate the state's mandatory plans; and
- (7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59 A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

- (1) those performed by an actor who seriously misunderstood the contents of the acts;
- (2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60 If part of a civil act is null and void, it shall not affect the validity of other parts.

Article 61 After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility. If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62 A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met.

Section II Agency

Article 63 Citizens and legal persons may perform civil juristic acts through agents. An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency. Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64 Agency shall include entrusted agency, statutory agency and appointed agency. An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65 A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing. Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal. If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66 The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given. An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal. If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable. If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67 If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68 If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69 An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;
- (3) when the agent dies;
- (4) when the principal loses his capacity for civil conduct; or
- (5) when the principal or the agent ceases to be a legal person.

Article 70 A statutory or appointed agency shall end under any of the following circumstances:

- (1) when the principal gains or recovers capacity for civil conduct;
- (2) when the principal or the agent dies;
- (3) when the agent loses capacity for civil conduct;
- (4) when the people's court or the unit that appointed the agent rescinds the appointment; or
- (5) when the guardian relationship between the principal and the agent ends for other reasons.

Chapter V Civil Rights

Section I Property Ownership and Related Property Rights

Article 71 "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72 Property ownership shall not be obtained in violation of the law. Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73 State property shall be owned by the whole people. State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74 Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

- (1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;
- (2) Property of collective economic organizations;
- (3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific, cultural, health, sports and other facilities; and
- (4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town). Collectively owned property shall be protected by

law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75 A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property. A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76 Citizens shall have the right of inheritance under the law.

Article 77 The lawful property of social organizations, including religious organizations, shall be protected by law.

Article 78 Property may be owned jointly by two or more citizens or legal persons. There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property. Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79 If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object. Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80 State-owned land may be used according to law by units under ownership by the whole people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land. The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law. Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81 State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them. State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights. The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands,

unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law. State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82 Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83 In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage.

Section II Creditors' Rights

Article 84 A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor. The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions.

Article 85 A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86 When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87 When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88 The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract. If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.

(2) if the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent. If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89 In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90 Legitimate loan relationships shall be protected by law.

Article 91 If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92 If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93 If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

Section III Intellectual Property Rights

Article 94 Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95 The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96 The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97 Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards. Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards.

Section IV Personal Rights

Article 98 Citizens shall enjoy the rights of life and health.

Article 99 Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited. Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100 Citizens shall enjoy the right of portrait. The use of a citizen's portrait for profit without his consent shall be prohibited.

Article 101 Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102 Citizens and legal persons shall enjoy the right of honor. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103 Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages

upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104 Marriage, the family, old people, mothers and children shall be protected by law. The lawful rights and interests of the handicapped shall be protected by law.

Article 105 Women shall enjoy equal civil rights with men.

Chapter VI Civil Liability

Section I General Stipulations

Article 106 Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability. Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability. Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107 Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108 Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109 If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110 Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

Section II Civil Liability for Breach of Contract

Article 111 If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112 The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party. The parties may specify in a contract that if one party breaches the contract it shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses

resulting from a breach of contract.

Article 113 If both parties breach the contract, each party shall bear its respective civil liability.

Article 114 If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115 A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116 If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

Section III Civil Liability for Infringement of Rights

Article 117 Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price. Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.

Article 118 If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119 Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120 If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses. The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.

Article 121 If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability.

Article 122 If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123 If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124 Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125 Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damage to others shall bear civil liability.

Article 126 If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault.

Article 127 If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128 A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129 If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130 If two or more persons jointly infringe upon another person's rights and cause him damage, they shall bear joint liability.

Article 131 If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132 If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133 If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced. If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

Section IV Methods of Bearing Civil Liability

Article 134 The main methods of bearing civil liability shall be:

- (1) cessation of infringements;
- (2) removal of obstacles;
- (3) elimination of dangers;
- (4) return of property;
- (5) restoration of original condition;
- (6) repair, reworking or replacement;
- (7) compensation for losses;
- (8) payment of breach of contract damages;
- (9) elimination of ill effects and rehabilitation of reputation; and
- (10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently. When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

Chapter VII Limitation of Action

Article 135 Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years.

Article 136 The limitation of action shall be one year in cases concerning the following:

- (1) Claims for compensation for bodily injuries;
- (2) Sales of substandard goods without proper notice to that effect;
- (3) Delays in paying rent or refusal to pay rent; or
- (4) Loss of or damage to property left in the care of another person.

Article 137 A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may

extend the limitation of action.

Article 138 If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139 A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140 A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141 If the law has other stipulations concerning limitation of action, those stipulations shall apply.

Chapter VIII Application of Law in Civil Relations with Foreigners

Article 142 The application of law in civil relations with foreigners shall be determined by the provisions in this chapter. If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations. International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143 If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144 The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145 The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law. If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146 The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied. An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147 The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148 Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149 In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150 The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

Chapter IX Supplementary Provisions

Article 151 The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152 If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such.

Article 153 For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154 Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours. When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day. If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day. The last day shall end at 24: 00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155 In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156 This Law shall come into force on January 1, 1987.

Contract Law of the People's Republic of China



(Adopted at the Second Session of the Ninth National People's Congress on March 15, 1999'
Promulgated by the Order NO. 15 of the President of the People's Republic of China on March 15,
1999 and effective as of October 1, 1999)

General Provisions

Chapter 1 General Principles

Article 1 This Law is enacted in order to protect the lawful rights and interests of the contracting parties, to maintain social and economic order, and to promote the process of socialist modernization.

Article 2 A contract in this Law refers to an agreement among natural persons, legal persons or other organizations as equal parties for the establishment, modification of a relationship involving the civil rights and obligations of such entities. Agreements concerning personal relationships such as marriage, adoption, guardianship, etc. shall be governed by the provisions in other laws.

Article 3 Contracting parties shall have equal legal status, and no party may impose its will on the other party.

Article 4 The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Article 5 The parties shall adhere to the principle of fairness in deciding their respective rights and obligations.

Article 6 The parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations.

Article 7 In concluding and performing a contract, the parties shall comply with the laws and administrative regulations, respect social ethics, and shall not disrupt the social and economic order or impair the public interests.

Article 8 A lawfully established contract shall be legally binding on the parties thereto, each of whom shall perform its own obligations in accordance with the terms of the contract, and no party shall unilaterally modify or terminate the contract. The contract established according to law is protected by law.

Chapter 2 Conclusion of Contracts

Article 9 In entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts. A party may appoint an agent to enter into a contract on its behalf in accordance

with the law.

Article 10 The parties may use written, oral or other forms in entering into a contract. A contract shall be in written form if the laws or administrative regulations so provide. A contract shall be concluded in written form if the parties so agree.

Article 11 "Written form" refers to a form such as a written contractual agreement, letter, electronic data text(including a telegram, telex, fax, electronic data exchange and e-mail)that can tangibly express the contents contained therein.

Article 12 The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses:

- (1) titles or names and domiciles of the parties;
- (2) subject matter;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) time limit, place and method of performance;
- (7) liability for breach of contract;
- (8) method to settle disputes.

The parties may conclude a contract by reference to a model text of each kind of contract.

Article 13 The parties shall conclude a contract in the form of an offer and an acceptance.

Article 14 An offer is an expression of an intent to enter into a contract with another person. Such expression of intent shall comply with the following:

- (1) its contents shall be specific and definite;
- (2) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.

Article 15 An invitation for offer is an expression of an intent to invite other parties to make offers thereto. Mailed price lists, public notices of auction and tender, prospectuses and commercial advertisements, etc. are invitations for offer. Where the contents of a commercial advertisement meet the requirements for an offer, it shall be regarded as an offer.

Article 16 An offer becomes effective when it reaches the offeree. If a contract is concluded through data-telex, and a recipient designates a specific system to receive the date-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient's systems shall be regarded as the time of arrival.

Article 17 An offer may be withdrawn. The withdrawal notice shall reach the offeree before or at the same time when the offer arrives.

Article 18 An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance.

Article 19 An offer may not be revoked, if

- (1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or
- (2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contract.

Article 20 An offer shall lose efficacy under any of the following circumstances:

- (1) the notice of rejection reaches the offeror;
- (2) the offeror revokes the offer in accordance with the law;
- (3) the offeree fails to dispatch an acceptance before the expiration of the time limit for acceptance;
- (4) the offeree makes substantial changes to the contents of the offer.

Article 21 An acceptance is the expression of an intention to by the offeree to assent to the offer.

Article 22 The acceptance shall be made in the form of a notice, except where acceptance may be made by an act on the basis of customary business practice or as expressed in the offer.

Article 23 An acceptance shall reach the offeror within the time limit prescribed in the offer. Where no time limit is prescribed in the offer, the acceptance shall reach the offeror in accordance with the following provisions:

- (1) if the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties;
- (2) If the offer is made in forms other than a dialogue, the acceptance shall reach the offeror within a reasonable period of time.

Article 24 Where an offer is made by letter or telegram, the time limit for acceptance shall accrue from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, it shall accrue from the postmark date on the envelope. Where an offer is made by means of instantaneous communication, such as telephone or facsimile, etc. the time limit for acceptance shall accrue from the moment that the offer reaches the offeree.

Article 25 A contract is established when the acceptance becomes effective.

Article 26 An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer. Where a contract is concluded in the form of date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law.

Article 27 An acceptance may be withdrawn, but a notice of withdrawal shall reach the offeror

before or at the same time when the notice of acceptance reaches the offeror.

Article 28 Where an offeree makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the offeror promptly informs the offeree of the effectiveness of the said acceptance.

Article 29 If the offeree dispatched the acceptance within the time limit specified for acceptance, and under normal circumstances the acceptance would have reached the offeror in due time, but due to other reasons the acceptance reaches the offeror after the time limit for acceptance has expired, such acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that it does not accept the acceptance due to the failure of the acceptance to arrive within the time limit.

Article 30 The contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.

Article 31 If the acceptance does not substantially modify the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.

Article 32 Where the parties conclude a contract in written form, the contract is established when it is signed or sealed by the parties.

Article 33 Where the parties conclude the contract in the form of letters or data-telex, etc., one party may request to sign a letter of confirmation before the conclusion of the contract. The contract shall be established at the time when the letter of confirmation is signed.

Article 34 The place of effectiveness of an acceptance shall be the place of the establishment of the contract. If the contract is concluded in the form of data-telex, the main business place of the recipient shall be the place of establishment. If the recipient does not have a main business place, its habitual residence shall be considered to be the place of establishment. Where the parties agree otherwise, such agreement shall apply.

Article 35 Where the parties conclude a contract in written form, the place where both parties sign or affix their seals on the contract shall be the place of establishment.

Article 36 Where a contract is to be concluded in written form as required by relevant laws and administrative regulations or as agreed by the parties, and the parties failed to conclude the contract in written form, but one party has performed the principal obligation and the other party has accepted it, the contract is established.

Article 37 Where a contract is to be concluded in written form, if one party has performed its principal obligation and the other party has accepted it before signing or sealing of the contract, the contract is established.

Article 38 Where the State has issued a mandatory plan or a State purchasing order based on necessity, the relevant legal persons and the other organizations shall conclude a contract between them in accordance with the rights and obligations as stipulated by the relevant laws and administrative regulations.

Article 39 Where standard terms are adopted in concluding a contract, the party supplying the standard terms shall define the rights and obligations between the parties abiding by the principle of fairness, and shall inform the other party to note the exclusion or restriction of its liabilities in a reasonable way, and shall explain the standard terms upon request by the other party. Standard terms are clauses that are prepared in advance for general and repeated use by one party, and which are not negotiated with the other party when the contract is concluded.

Article 40 When standard terms are under the circumstances stipulated in Articles 52 and 53 of this Law, or the party which supplies the standard terms exempts itself from its liabilities, increases the liabilities of the other party, and deprives the material rights of the other party, the terms shall be invalid.

Article 41 If a dispute over the understanding of the standard terms occurs, it shall be interpreted in accordance with common understanding. Where there are two or more kinds of interpretation, an interpretation unfavorable to the party supplying the standard terms shall prevail. Where the standard terms are inconsistent with non-standard terms, the latter shall prevail.

Article 42 The party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party:

- (1) pretending to conclude a contract, and negotiating in bad faith;
- (2) deliberately concealing important facts relating to the conclusion of the contract or providing false information;
- (3) performing other acts which violate the principle of good faith.

Article 43 A trade secret the parties learn in concluding a contract shall not be disclosed or improperly used, no matter the contract is established or not. If the party discloses or improperly uses such trade secret and thus causing loss to the other party, it shall be liable for damages.

Chapter 3 Validity of Contracts

Article 44 The contract established according to law becomes effective upon its establishment. With regard to contracts that are subject to approval or registration as stipulated by relevant laws or administrative regulations, the provisions thereof shall be followed.

Article 45 The parties may agree on that the effectiveness of a contract be subject to certain conditions. A contract whose effectiveness is subject to certain conditions shall become effective when such conditions are accomplished. The contract with dissolving conditions shall become invalid when such conditions are satisfied. If a party improperly prevent the satisfaction of a condition for its own interests, the condition shall be regarded as having been accomplished. If a party improperly facilitates the satisfaction of a condition, such condition shall be regarded as not to have been satisfied.

Article 46 The parties may agree on a conditional time period as to the effectiveness of the contract. A contract subject to an effective time period shall come into force when the period expires. A contract with termination time period shall become invalid when the period expires.

Article 47 A contract concluded by a person with limited civil capacity of conduct shall be effective after being ratified afterwards by the person's statutory agent, but a pure profit-making contract or a contract concluded which is appropriate to the person's age, intelligence or mental health conditions need not be ratified by the person's statutory agent. The counterpart may urge the statutory agent to ratify the contract within one month. It shall be regarded as a refusal of ratification that the statutory agent does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified. The withdrawal shall be made by means of notice.

Article 48 A contract concluded by an actor who as no power of agency, who oversteps the power of agency, or whose power of agency has expired and yet concludes it on behalf of the principal, shall have no legally binding force on the principal without ratification by the principal, and the actor shall be held liable. The counterpart may urge the principal to ratify it within one month. It shall be regarded as a refusal of ratification that the principal does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified. The withdrawal shall be made by means of notice.

Article 49 If an actor has no power of agency, oversteps the power of agency, or the power of agency has expired and yet concludes a contract in the principal's name, and the counterpart has reasons to trust that the actor has the power of agency, the act of agency shall be effective.

Article 50 Where a statutory representative or a responsible person of a legal person or other organization oversteps his/her power and concludes a contract, the representative act shall be effective except that the counterpart knows or ought to know that he/she is overstepping his/her powers.

Article 51 Where a person having no right to disposal of property disposes of other persons' properties, and the principal ratifies the act afterwards or the person without power of disposal has obtained the power after concluding a contract, the contract shall be valid.

Article 52 A contract shall be null and void under any of the following circumstances:

(1) a contract is concluded through the use of fraud or coercion by one party to damage the

interests of the State;

(2) malicious collusion is conducted to damage the interests of the State, a collective or a third party;

(3) an illegitimate purpose is concealed under the guise of legitimate acts;

(4) damaging the public interests;

(5) violating the compulsory provisions of laws and administrative regulations.

Article 53 The following exception clauses in a contract shall be null and void:

(1) those that cause personal injury to the other party;

(2) those that cause property damages to the other party as result of deliberate intent or gross negligence.

Article 54 A party shall have the right to request the people's court or an arbitration institution to modify or revoke the following contracts:

(1) those concluded as a result of significant misconception;

(2) those that are obviously unfair at the time when concluding the contract.

If a contract is concluded by one party against the other party's true intentions through the use of fraud, coercion, or exploitation of the other party's unfavorable position, the injured party shall have the right to request the people's court or an arbitration institution to modify or revoke it. Where a party requests for modification, the people's court or the arbitration institution may not revoke the contract.

Article 55 The right to revoke a contract shall extinguish under any of the following circumstances:

(1) a party having the right to revoke the contract fails to exercise the right within one year from the day that it knows or ought to know the revoking causes;

(2) a party having the right to revoke the contract explicitly expresses or conducts an act to waive the right after it knows the revoking causes.

Article 56 A contract that is null and void or revoked shall have no legally binding force ever from the very beginning. If part of a contract is null and void without affecting the validity of the other parts, the other parts shall still be valid.

Article 57 If a contract is null and void, revoked or terminated, it shall not affect the validity of the dispute settlement clause which is independently existing in the contract.

Article 58 The property acquired as a result of a contract shall be returned after the contract is confirmed to be null and void or has been revoked; where the property can not be returned or the return is unnecessary, it shall be reimbursed at its estimated price. The party at fault shall compensate the other party for losses incurred as a result thereof. If both parties are fault, each party shall respectively be liable.

Article 59 If the parties have maliciously conducted collusion to damage the interests of the State, a collective or a third party, the property thus acquired shall be turned over to the State or returned

to the collective or the third party.

Chapter 4 Performance of Contracts

Article 60 Each party shall fully perform its own obligations as agreed upon. The parties shall abide by the principle of good faith, and perform obligations of notification, assistance, and confidentiality, etc. in accordance with the nature and purpose of the contract and the transaction practice.

Article 61 Where, after the contract becomes effective, there is no agreement in the contract between the parties on such contents as quality, price or remuneration, or place of performance etc., or such agreement is ambiguous, the parties may agree upon supplementary terms through consultation; if a supplementary agreement cannot be reached, such terms shall be determined in accordance with the relevant provisions of the contract or the transaction practices.

Article 62 Where certain contents agreed upon by the parties in the contract are ambiguous and cannot be determined in accordance with the provisions in Article 61 of this Law, the following provisions shall be applied:

- (1) if quality requirement is not clear, performance shall be in accordance with the state standard or industry standard; absent any state or industry standard, performance shall be in accordance with the customary standard or any particular standard consistent with the purpose of the contract;
- (2) if price or remuneration is not clear, performance shall be in accordance with the prevailing market price at the place of performance at the time the contract was concluded, and if adoption of a price commissioned by the government or based on government issued pricing guidelines is required by law, such requirement applies;
- (3) where the place of performance is not clear, if the obligation is payment of money, performance shall be at the place where the payee is located; if the obligation is delivery of immovable property, performance shall be at the place where the immovable property is located; for any other subject matter, performance shall be effected at the place of location of the party fulfilling the obligations.
- (4) if the time of performance is not clear, the obligor may perform, and the obligee may require performance, at any time, provided that the other party shall be given the time required for preparation;
- (5) if the method of performance is not clear, performance shall be rendered in a manner which is conducive to realizing the purpose of the contract;
- (6) if the responsibility for the expenses of performance is not clear, the party fulfilling the obligations shall bear the expenses.

Article 63 Where the government-fixed price or government-directed price is followed in a contract, if the said price is readjusted within the time limit for delivery as stipulated in the contract, the payment shall be calculated according to the price at the time of delivery. Where a party delays in delivering the subject matter, the original price shall be adopted if the price rises; and the new price shall be adopted if the price falls. Where a party delays in taking delivery of the subject matter or making payment, the new price shall be adopted if the price rises, and the

original price shall be adopted if the price falls.

Article 64 Where the parties agree that the obligor shall perform the obligations to a third party, and the obligor fails to perform its obligations to such third party or its performance of the obligations is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 65 Where the parties agree that a third party performs the obligations to the obligee, and the third party fails to perform the obligations or the performance is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 66 Where both parties have obligations toward one another and there is no order of priority in respect of the performance of obligations, the parties shall perform the obligations simultaneously. Each party has the right to reject any demand by the other party for performance prior to the performance by the other party. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is perform later has the right to reject the other party's demand for corresponding performance.

Article 67 Where both parties have obligations toward each other and there is an order of priority in respect of the performance, and the party who is to perform first fails to perform, the party who is to perform later has the right to reject the other party's demand for performance. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is to perform later has the right to reject the other party's demand for corresponding performance.

Article 68 The party required to perform first may suspend its performance if it has conclusive evidence showing that the other party is under any of the following circumstances:

- (1) its business has seriously deteriorated;
- (2) it has engaged in transfer of assets or withdrawal of funds for the purpose of evading debts;
- (3) it has lost its business creditworthiness;
- (4) it is in any other circumstance which will or may cause it to lose its ability to perform.

Where a party suspends performance without conclusive evidence, it shall be liable for breach of contract.

Article 69 If a party suspends its performance in accordance with the provisions of Article 68 of this Law, it shall timely notify the other party. If the other party provides appropriate assurance for its performance, the party shall resume performance. After performance was suspended, if the other party fails to regain its ability to perform and fails to provide appropriate assurance within a reasonable time, the suspending party may terminate the contract.

Article 70 Where the obligee fails to notify the obligor of its separation, merger, or change of the domicile, thereby making it difficult for the obligor to perform its obligations, the obligor may suspend its performance or escrow the subject matter.

Article 71 The obligee may reject the obligor's advance performance of its obligations, except that the advance performance does not harm the obligee's interests. Any additional expense incurred by the obligee due to the obligor's advance performance of its obligations shall be borne by the obligor.

Article 72 An obligee may reject the obligor's partial performance, except that the partial performance of its obligations does not harm the obligee's interests. Any additional expense incurred by the obligee due to the obligor's partial performance of its obligations shall be borne by the obligor.

Article 73 Where the obligor is remiss in exercising its due creditor's right, thereby harming the obligee's interests, the obligee may petition the People's Court for subrogation in its own name, except that the creditor's right exclusively belongs to the obligor. The extent to which the subrogation rights can be exercised is limited to the obligee's rights. The expenses necessary for the obligee to exercise such subrogation rights shall be borne by the obligor.

Article 74 Where the obligor waives its creditor's right against a third party that is due or assigns its property without reward, thereby harming the obligee's interests, the obligee may petition the People's Court for cancellation of the obligor's act. Where the obligor assigns its property at a low price which is manifestly unreasonable, thereby harming the obligee's interests, and the assignee is aware of the situation, the obligee may also petition the People's Court for cancellation of the obligor's act. The extent to which the right to cancel can be exercised is limited to the rights of the obligee. The expenses necessary for the obligee to exercise the right to cancel shall be borne by the obligor.

Article 75 The right to cancel shall be exercised within one year from the date the obligee knows or should have known of the matter for cancellation. Such right to cancel shall lapse if the obligee fails to exercise such rights within five years from the date of the occurrence of such act.

Article 76 Once a contract becomes effective, a party may not refuse to perform its obligations thereunder due to a change in its name, or its legal representative, the person in charge, or the person handling the contract.

Chapter 5 Modification and Assignment of Contracts

Article 77 A contract may be modified if the parties reach a consensus through consultation. If the laws or administrative regulations so provide, approval and registration procedures for such modification shall be gone through in accordance with such provisions.

Article 78 Where an agreement by the parties on the contents of a modification is ambiguous, the contract shall be presumed as not having been modified.

Article 79 The obligee may assign its rights under a contract, in whole or in part, to a third party, except under the following circumstances:

- (1) such rights may not be assigned in light of the nature of the contract;
- (2) such rights may not be assigned according to the agreement between the parties;
- (3) such rights may not be assigned according to the provisions of the laws.

Article 80 Where the obligee assigns its rights, it shall notify the obligor. Such assignment will have no effect on the obligor without notice thereof. A notice by the obligee to assign its rights shall not be revoked, unless such revocation is consented to by the assignee.

Article 81 Where the obligee assigns its right, the assignee shall acquire the collateral rights related to the principal rights, except that the collateral rights exclusively belong to the obligee.

Article 82 Upon receipt of the notice of assignment of rights, the obligor may assert against the assignee any defenses it has against the assignor.

Article 83 Upon receipt by the obligor of the notice of assignment of rights, the obligor shall have vested rights against the assignor, and if the rights of the obligor vest prior to or at the same time as the assigned rights, the obligor may claim an offset against the assignee.

Article 84 Where the obligor delegates its obligations under a contract in whole or in part to a third party, such delegation shall be subject to the consent of the obligee.

Article 85 Where the obligor delegates its obligation, the new obligor may exercise any defense that the original obligor had against the obligee.

Article 86 Where the obligor delegates its obligation, the new obligor shall assume the incidental obligations related to the main obligations, except that the obligations exclusively belong to the original obligor.

Article 87 Where the laws or administrative regulations stipulate that the assignment of rights or transfer of obligations shall undergo approval or registration procedures, such provisions shall be followed.

Article 88 Upon the consent of the other party, one party may transfer its rights together with its obligations under contract to a third party.

Article 89 Where the rights and obligations are transferred together, the provisions in Articles 79, Articles 81 to 83, and Articles 85 to 87 of this Law shall be applied.

Article 90 Where a party is merged after the contract has been concluded, the legal person or other organization established after the merger shall exercise the rights and obligations thereunder. Unless otherwise agreed upon by the obligor and obligee, the legal persons or other organizations that exist after the division shall jointly enjoy the rights and jointly assume the obligations under the contract.

Chapter 6 Termination of Contractual Rights and Obligations

Article 91 The rights and obligations under a contract shall be terminated under any of the following circumstances:

- (1) the obligations have been performed as agreed upon;
- (2) the contract has been rescinded;
- (3) the obligations have been offset against each other;
- (4) the obligor has escrowed the subject matter accordance with the law;
- (5) the obligee has released the obligor of its obligation;
- (6) the rights and obligations have vested in one party;
- (7) any other circumstances for termination as stipulated by the laws or agreed upon by the parties.

Article 92 After the termination of the rights and obligations under the contract, the parties shall observe the principal of honesty and good faith and perform the obligations of notification, assistance and confidentiality, etc. in accordance with relevant transaction practices.

Article 93 The parties may terminate a contract if they reach a consensus through consultation. The parties may agree upon conditions under which either party may terminate the contract. Upon satisfaction of the conditions, the party who has the right to terminate may terminate the contract.

Article 94 The parties to a contract may terminate the contract under any of the following circumstances:

- (1) it is rendered impossible to achieve the purpose of contract due to an event of force majeure;
- (2) prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation;
- (3) the other party delayed performance of its main obligation after such performance has been demand, and fails to perform within a reasonable period;
- (4) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract;
- (5) other circumstance as provided by law.

Article 95 Where the laws stipulates or the parties agreed upon the time limit to exercise the right to terminate the contract, and no party exercises it when the time limit expires, the said right shall be extinguished. Where neither the law stipulates nor the parties make an agreement upon the time limit to exercise the right to terminate the contract, and no party exercise it within a reasonable time period after being urged, the said right shall be extinguished.

Article 96 A party demanding termination of a contract in accordance with the provisions of Paragraph 2 of Article 93 and Article 94 of this Law shall notify the other party. The contract shall be terminated upon the receipt of the notice by the other party. If the other party objects to such termination, it may petition the People's Court or an arbitration institution to adjudicate the validity of the termination of the contract. Where the laws and administrative regulations so provide, the approval and registration procedures for the termination of the contract shall be gone through in accordance with such laws and regulations.

Article 97 After the termination of a contract, performance shall cease if the contract has not been performed; if the contract has been performed, a party may, in accordance with the circumstances of performance or the nature of the contract, demand the other party to restore such party to its original state or adopt other remedial measures, and such party shall have the right to demand compensation for damages.

Article 98 The termination of rights and obligations under a contract shall not affect the validity of clauses that related to the final settlement of accounts and winding-up.

Article 99 Where the parties are liable to one another for obligations that are due, and if the type and nature of the subject matter of such obligations are the same, any party may offset its own obligation against the obligation of the other party, except unless such offset is not allowed according to the laws and regulations or cannot be made given the nature of the contract. The party who claims such offset shall notify the other party. The notice shall become effective when it reaches the other party. The offset shall not be subject to any condition or time limit.

Article 100 Where the parties have obligations towards one another, and the type and nature of such obligations are different, the obligations may also be offset upon consensus between the parties after consultation.

Article 101 The obligor may escrow the subject matter under any of the following circumstances which render performance of the obligations difficult:

- (1) the obligee refuses to accept them without justified reasons;
- (2) the whereabouts of the obligee are unknown;
- (3) the obligee is deceased and the successor has not been determined, or the obligee has lost civil capacity and a guardian has not been appointed;
- (4) other circumstance as provided for in the laws. Where the subject matter is not fit for escrow, or the cost of escrow is excessively high, the obligor may auction or sell the subject matter according to law, and escrow the proceeds therefrom.

Article 102 Unless the whereabouts of the obligee are unknown, the obligee shall notify the obligee, or the successor or guardian of the obligor immediately after the subject matter has been placed in escrow.

Article 103 Once the subject matter has been placed in escrow, the risk of damage to, destruction or loss of the subject matter shall be borne by the obligee. The obligee shall be entitled to any fruits of the subject matter during the escrow period. Escrow expenses shall be borne by the obligee.

Article 104 The obligee may claim the subject matter in escrow at any time, except that if the obligee has any due obligations toward the obligor, prior to the obligee's performance of its obligations or the obligee's provision of security for its performance, the escrow institution shall, at the request of the obligor, refuse the obligee's claim of the escrowed subject matter. The right of

the obligee to reclaim the subject matter in escrow shall lapse if it is not exercised within five years from the date the subject matter is placed in escrow, and the escrowed subject matter shall revert to the national treasury after the deduction of the escrow costs.

Article 105 Where an obligee releases the obligor of its own obligations, in whole or in part, the rights and obligations under the contract shall terminate in whole or in part.

Article 106 If the rights and obligations under a contract vest in one party, such rights and obligations thereunder shall terminate, unless they involve the interests of a third party.

Chapter 7 Liabilities for Breach of Contracts

Article 107 If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.

Article 108 Where one party express explicitly or indicates by its conduct that it will not perform its obligations under a contract, the other party may demand it to bear the liability for the breach of contract before the expiry of the performance period.

Article 109 If a party fails to pay the price or remuneration, the other party may request it to make the payment.

Article 110 Where a party fails to perform the non-monetary obligations or its performance of non- monetary obligations fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:

- (1) it is unable to be performed in law or in fact;
- (2) the subject matter of the obligation is unfit for compulsory performance or the performance expenses are excessively high;
- (3) the obligee does not require performance within a reasonable time.

Article 111 Where the quality fails to satisfy the agreement, the breach of contract damages shall be borne in the manner as agreed upon by the parties. Where there is no agreement in the contract on the liability for breach of contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 61 of this Law, the damaged party may, in light of the nature of the subject matter and the degree of loss, reasonably choose to request the other party to bear the liabilities for the breach of contract such as repairing, substituting, reworking, returning the goods, or reducing the price or remuneration.

Article 112 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement, and the other party still suffers from other damages after the performance of the obligations or adoption of remedial measures, such party shall compensate the other party for such damages.

Article 113 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract. The business operator who commits default activities in providing to the consumer any goods or services shall be liable for paying compensation for damages in accordance with the Law of the People's Republic of China on Protection of Consumer Rights and Interests.

Article 114 The parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach.

Where the amount of liquidated damages agreed upon is lower than the damages incurred, a party may petition the People's Court or an arbitration institution to make an increase; where the amount of liquidated damages agreed upon are significantly higher than the damages incurred, a party may petition the People's Court or an arbitration institution to make an appropriate reduction.

Where the parties agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the obligations after paying the breach of contract damages.

Article 115 The parties may agree that a party pay a deposit to the other party as a guaranty for the obligation in accordance with the Security Law of the People's Republic of China. Upon the obligor has performed its obligation, the deposit shall be offset against the price or refunded to the obligor. If the party paying the deposit fails to perform its obligations under the contract, such party has no right to demand for the return of the deposit; where the party accepting the deposit fails to perform its obligations under the contract, such party shall refund twice the value of the deposit.

Article 116 If the parties agree on both liquidated damages and a deposit, and one party is in breach, the other party may choose to apply either the provisions for liquidated damages or that for the deposit.

Article 117 A party who is unable to perform a contract due to force majeure is exempted from liability in part or in whole in light of the impact of the event of force majeure, except otherwise provided by law. Where an event of force majeure occurs after the party's delay in performance, it is not exempted from such liability. For purposes of this Law, force majeure means any objective circumstances which are unforeseeable, unavoidable and insurmountable.

Article 118 If a party is unable to perform a contract due to an event of force majeure, it shall timely notify the other party so as to mitigate the losses that may be caused to the other party, and shall provide evidence of such event of force majeure within a reasonable period.

Article 119 Where a party breached the contract, the other party shall take the appropriate

measures to prevent the losses from increasing; where the other party's failure to take appropriate measures results in additional losses, it cannot demand compensation for the additional losses. Any reasonable expense incurred by the other party in preventing additional losses shall be borne by the party in breach.

Article 120 If both parties breach a contract, each party shall bear its own respective liabilities.

Article 121 Where a party's breach is attributable to a third party, it shall nevertheless be liable to the other party for breach. Any dispute between the party and such third party shall be resolved in accordance with the law or the agreement between the parties.

Article 122 Where the breach of contract by one party infringes upon the other party's personal or property rights, the aggrieved party is entitled to choose to claim the assumption by the violating and infringing party of liabilities for breach of contract according to this Law, or to claim the assumption by the violating and infringing party of liabilities for infringement according to other laws.

Chapter 8 Other Provisions

Article 123 Where other laws provide otherwise in respect of a contract, such provisions shall prevail.

Article 124 Where there are no explicitly provisions in the Specific Provisions of this Law or in any other law concerning a certain contract, the provisions in the General Provisions of this Law shall be applied, and reference may be made to the provisions in the Specific Provisions of this Law or in any other law that most closely relate to such contract.

Article 125 If any disputes arise between the parties over the understanding of any clause of the contract, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions in the contract, the purpose of the contract, the transaction practices and the principle of good faith. Where a contract is concluded in two or more languages and it is agreed that all versions are equally authentic, the words and sentences in each version are construed to have the same meaning. In case of any discrepancy in the words or sentences used in the different language versions, they shall be interpreted in light of the purpose of the contract.

Article 126 Parties to a foreign-related contract may select the applicable law for resolution of a contractual dispute, except as otherwise provided by law. Where parties to the foreign-related contract fails to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto. For a Sino-foreign equity joint venture enterprise contract, Sino-foreign cooperative joint venture contract, or a contract for Sino-foreign joint exploration and development of natural resources which is performed within the territory of the People's Republic of China, the law of the People's Republic of China shall be applied.

Article 127 Within the scope of their respective duties, the administrative department of industry

and commerce and other relevant departments shall, in accordance with the relevant laws and administrative regulations, be responsible for monitoring and dealing with any illegal acts which, by taking advantage of contracts, harm the interests of the State or the interests of the public and society; where such an act constitutes a crime, criminal liability shall be investigated in accordance with the law.

Article 128 The parties may resolve a contractual dispute through settlement or mediation. Where the parties do not wish to, or are unable to, resolve such dispute through settlement or mediation, the dispute may be submitted to the relevant arbitration institution for arbitration in accordance with the arbitration agreement between the parties. Parties to a foreign-related contract may apply to a Chinese arbitration institution or another arbitration institution for arbitration. Where the parties did not conclude an arbitration agreement, or the arbitration agreement is invalid, either party may bring a suit to the People's Court. The parties shall perform the judgments, arbitration awards or mediation agreements which have taken legal effect; if a party refuses to perform, the other party may request the People's Court for enforcement.

Article 129 For a dispute arising from a contract for the international sale of goods or a technology import or export contract, the time limit for bringing a suit or applying for arbitration is four years, calculating from the date on which the party knows or ought to know the infringement on its rights. For a dispute arising from any other type of contract, the time limit for bringing a suit or applying for arbitration shall be governed by the relevant law. Specific Provisions

Chapter 9 Sales Contracts

Article 130 A sales contract is a contract whereby the seller transfers the ownership of a subject matter to the buyer, and the buyer pays the price for it.

Article 131 In addition to the terms set forth in Article 12 of this Law, a sales contract may also contain such clauses as package manner, inspection standards and method, method of settlement and clearance, language adopted in the contract and its authenticity.

Article 132 The subject matter to be sold shall be owned by the seller or of that the seller shall have the right to dispose. Where the transfer of a subject matter is prohibited or restricted by laws or administrative regulation, such provision shall be applied.

Article 133 The ownership of a subject matter shall be transferred upon the delivery of the object, except as otherwise stipulated by law or agreed upon by the parties.

Article 134 The parties to a sales contract may agree that the ownership shall belong to the seller if the buyer fails to pay the price or perform other obligations.

Article 135 The seller shall perform the obligations of delivering to the buyer the subject matter or handing over the documents for the buyer to take possession of the subject matter and of transferring the ownership thereto.

Article 136 In addition to the document for taking possession, the seller shall deliver to the buyer the relevant documents and materials in accordance with the agreement or transaction practices.

Article 137 In a sale of any subject matter which contains intellectual property such as computer software, etc., the intellectual property in the subject matter does not belong to the buyer, except as otherwise provided by law or agreed upon by the parties.

Article 138 The seller shall deliver the subject matter by the time limit agreed upon. Where a time period for delivery is agreed upon, the seller may deliver at any time within the said time period.

Article 139 Where the time limit for delivery of the subject matter is not agreed upon between the parties or the agreement is not clear, the provisions of Article 61 and Item 4 of Article 62 shall be applied.

Article 140 Where a subject matter has been possessed by the buyer prior to the conclusion of the contract, the delivery time shall be the time when the contract becomes effective.

Article 141 The seller shall deliver the subject matter at the agreed place. Where there is no agreement between the parties as to the place to deliver the subject matter or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the following provisions shall be applied:

- (1) if the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier so as to hand it over to the buyer;
- (2) if the subject matter does not need carriage, and the seller and buyer know the place of the subject matter when concluding the contract, the seller shall deliver the subject matter at such place; if the place is unknown, the subject matter shall be delivered at the business place of the seller when concluding the contract.

Article 142 The risk of damage to or loss of a subject matter shall be borne by the seller prior to the delivery of the subject matter and by the buyer after delivery, except as otherwise stipulated by law or agreed upon by the parties.

Article 143 Where a subject matter cannot be delivered at the agreed time limit due to any reasons attributable to the buyer, the buyer shall bear the risk of damage to or loss of the subject matter as of the date it breaches the agreement.

Article 144 Where the seller sells a subject matter delivered to a carrier for carriage and is in transit, unless otherwise agreed upon by the parties, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the time of establishment of the contract.

Article 145 Where there is no agreement between the parties as to the place of delivery or such agreement is not clearly, and the subject matter needs carriage according to the provisions of Item 1 of Paragraph 2 of Article 141 of this Law, the risk of damage to or missing of the subject matter

shall be borne by the buyer after the seller has delivered the subject matter to the first carrier.

Article 146 Where the seller has placed the subject matter at the place of delivery in accordance with the agreement or in accordance with the provisions of Item 2 of Paragraph 2 of Article 141 of this Law, while the buyer fails to take delivery in breach of the agreement, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the date of breach of the agreement.

Article 147 The failure of the seller to deliver the documents and materials relating to the subject matter as agreed upon shall not affect the passing of the risk of damage to or missing of the subject matter.

Article 148 Where the quality of the subject matter does not conform to the quality requirements, making it impossible to achieve the purpose of the contract, the buyer may refuse to accept the subject matter or may terminate the contract. If the buyer refuses to accept the subject matter or terminate the contract, the risk of damage to or missing of the subject matter shall be borne by the seller.

Article 149 Where the risk of damage to or missing of the subject matter is borne by the buyer, the buyer's right to demand the seller to bear liability for breach of contract because the seller's performance of its obligations is not in conformity with the agreement shall not be affected.

Article 150 Unless otherwise provided by law, the seller shall have the obligation to warrant that no third party shall exercise against the buyer any rights with respect to the delivered subject matter.

Article 151 Where the buyer knows or ought to know, at the time of conclusion of the contract, that a third party has rights on the subject matter to be sold, the seller does not assume the obligation prescribed in Article 150 of this Law.

Article 152 Where the buyer has conclusive evidence to demonstrate that a third party may claim rights on the subject matter, it may suspend to pay the corresponding price, except where the seller provides a appropriate guaranty.

Article 153 The seller shall deliver the subject matter in compliance with the agreed quality requirements. Where the seller gives the quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein.

Article 154 Where the quality requirements for the subject matter is not agreed between parties or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the provisions of Item 1 of Article 62 of this Law shall be applied.

Article 155 If the subject matter delivered by the seller fails to comply with the quality requirements, the buyer may demand the seller to bear liability for breach of contract in accordance with Article 111 of this Law.

Article 156 The seller shall deliver the subject matter packed in the agreed manner. Where there is no agreement on package manner in the contract or the agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the subject matter shall be packed in a general manner, and if no general manner, a package manner enough to protect the subject matter shall be adopted.

Article 157 Upon receipt of the subject matter, the buyer shall inspect it within the agreed inspection period. Where no inspection period is agreed, the buyer shall timely inspect the subject matter.

Article 158 Where the parties have agreed upon an inspection period, the buyer shall notify the seller of any non-compliance in quantity or quality of the subject matter within such inspection period. Where the buyer delayed in notifying the seller, the quantity or quality of the subject matter is deemed to comply with the contract. Where no inspection period is agreed, the buyer shall notify the seller within a reasonable period, commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance. If the buyer fails to notify within a reasonable period or fails to notify within 2 years, commencing on the date when it received the subject matter, the quantity or quality of the subject matter is deemed to comply with the contract, except that if there is a warranty period in respect of the subject matter, the warranty period applies and supersedes such two year period. Where the seller knows or ought to know the non-compliance of the subject matter, the buyer is not subject to the time limits for notification prescribed in the preceding two paragraphs.

Article 159 The buyer shall pay the price in the agreed amount. Where the price is not agreed or the agreement is not clear, the provisions of Article 61 and Item 2 of Article 62 shall be applied.

Article 160 The buyer shall pay the price at the agreed place. Where the place of payment is not agreed or the agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the buyer shall make payment at the seller's place of business, provided that if the parties agreed that payment shall be conditional upon delivery of the subject matter or the document for taking delivery thereof, payment shall be made at the place where the subject matter, or the document for taking delivery thereof, is delivered.

Article 161 The buyer shall pay the price at the agreed time. Where the time for payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the buyer shall make payment at the same time it receives the subject matter or the document for taking delivery thereof.

Article 162 Where the seller delivers the subject matter in a quantity greater than that agreed in the contract, the buyer may accept or reject the excess quantity. Where the buyer accepts the excess quantity, it shall pay the price based on the contract rate; where the buyer rejects the excess quantity, it shall timely notify the seller.

Article 163 The fruits of the subject matter belong to the seller if accrued before delivery, and to the buyer if accrued after delivery.

Article 164 Where a contract is terminated due to non-compliance of any main component of the subject matter, the effect of termination extends to the ancillary components. Where the contract is terminated due to non-compliance of any ancillary component of the subject matter, the effect of termination does not extend to the main components.

Article 165 Where the subject matter comprises of a number of components, one of which does not comply with the contract, the buyer may terminate the portion of the contract in respect of such component, provided that if severance of such component with the other components will significantly diminish the value of the subject matter, the party may terminate the contract in respect of such number of components.

Article 166 Where the seller is to deliver the subject matter in installments, if the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the said installment cannot realize the contract purpose, the buyer may terminate the portion of the contract in respect thereof. If the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the delivery of the subsequent installments of subject matter can not realize the contract purpose, the buyer may terminate the portion of the contract in respect of such installment as well as any subsequent installment. If the buyer is to terminate the portion of the contract in respect of a particular installment which is interdependent with all other installments, it may terminate the contract in respect of all delivered and undelivered installments.

Article 167 In a sale by installment payment, where the buyer fails to make payments as they became due, if the delinquent amount has reached one fifth of the total price, the seller may require payment of the full price from the buyer or terminate the contract. If the seller terminates the contract, it may require the buyer to pay a fee for its use of the subject matter.

Article 168 In a sale by sample, the parties shall place the sample under seal, and may specify the quality of the sample. The subject matter delivered by the seller shall comply with the sample as well as the quality specifications.

Article 169 In a sale by sample, if the buyer is not aware of a latent defect in the sample, the subject matter delivered by the seller shall nevertheless comply with the normal quality standard for a like item, even though the subject matter delivered complies with the sample.

Article 170 In a sale by trial, the parties may agree the trial period. Where a trial period is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be determined by the seller.

Article 171 In a sale by trial, the buyer may either purchase or reject the subject matter during the trial period. At the end of the trial period, the buyer is deemed to have made the purchase if it fails

to demonstrate its intent to purchase or reject the subject matter.

Article 172 In a sale by tender, matters such as the rights and obligations of the parties and the tendering procedure, etc. are governed by the relevant laws and administrative regulations.

Article 173 In a sale by auction, matters such as the rights and obligations of the parties and the auctioning procedure, etc. are governed by the relevant laws and administrative regulations.

Article 174 If there are provisions in the law for other non-gratuitous contracts, such provisions shall apply; in the absence of such provisions, reference shall be made to the relevant provision on sales contract.

Article 175 Where the parties agree on a barter transaction involving transfer of title to the subject matters, such transaction shall be governed by reference to the relevant provisions on sales contracts.

Chapter 10 Contracts for Supply of Power, Water, Gas, or Heat

Article 176 A power supply contract is a contract whereby the power supplier supplies power to the power customer, and the power consumer pay an electricity fee.

Article 177 The contents of a power supply contract include terms such as the method, quality, and time of power supply, and the capacity, location and nature of power use, and the metering method, electricity rate, the method of settlement of electricity fees, and the responsibility for maintenance of the power supply and use facilities, etc..

Article 178 The place of performance of a power supply contract shall be the place agreed upon by the parties, and if there is no agreement or the agreement is not clear, the place of performance shall be the boundary where ownership of the power supply facilities is divided.

Article 179 The power supplier shall supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract. Where the power supplier fails to supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract, thereby causing losses to the power customer, it shall be liable for damages.

Article 180 Where the power supplier needs to suspend the power supply due to reasons such as planned maintenance or provisional inspection and repair of the power supply facilities, legally restriction on power, or illegal use of power by the power customer, etc., it shall notify the power customer in advance in accordance with the relevant provisions of the State. Where the power supplier suspends power supply without notifying the power customer in advance, thereby causing losses to the power customer, it shall be liable for damages.

Article 181 Where the power supply is suspended due to a natural disaster or other causes, the

power supplier shall make prompt repairs in accordance with the relevant provisions of the State. Where the power supplier fails to make prompt repair, thereby causing loss to the power customer, it shall be liable for damages.

Article 182 The power customer shall timely pay the electricity fees in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer delays in paying the electricity fees, it shall pay breach of contract damages in accordance with the contract. Where the power customer fails to pay the electricity fees and breach of contract damages within a reasonable time limit after receiving demand for payment, the power supplier may shut off the power supply in accordance with the procedure prescribed by the state.

Article 183 The power customer shall use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer fails to use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract, thereby causing losses to the power supplier, it shall be liable for damages.

Article 184 A contract for the supply of water, gas or heat shall be governed by reference to the relevant provisions on power supply contracts.

Chapter 11 Gift Contracts

Article 185 A gift contract is a contract whereby the donor conveys his property to the donee gratuitously and the donee expresses his acceptance of the gift.

Article 186 Prior to the transfer of rights to the gift property, the donor may revoke the gift. The provisions of the preceding paragraph does not apply to any gift contract the nature of which serves the public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or any gift contract which has been notarized.

Article 187 Where conveyance of the gifted property is subject to such procedures as registration according to law, the relevant procedures shall be carried out.

Article 188 In the case of a gift contract the nature of which serves the public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or a gift contract which has been notarized, if the donor fails to deliver the gift property, the donee may require delivery.

Article 189 Where the gifted property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

Article 190 A gift may be conditioned on an obligation. Where the gift is conditioned on an obligation, the donee shall perform his obligations in accordance with the contract.

Article 191 The donor is not liable for any defect in the gifted property. Where the gift is conditioned on an obligation, and the gifted property is defective, the donor has the same warranty

obligations as a seller to the extent of the prescribed obligations. Where the donor intentionally omits to inform the donee of the defect or warranted the absence of any defect, thereby causing losses to the donee, he shall be liable for damages.

Article 192 Where the donee is in any of the following circumstances, the donor may revoke the gift:

- (1) seriously harming the donor or any immediate family member thereof;
- (2) failing to perform support obligations owed to the donor;
- (3) failing to perform the obligations under the gift contract.

The donor shall exercise its revocation right within one year after he knows, or ought to know, the cause for revocation.

Article 193 Where the donor is deceased or incapacitated due to the donee's illegal act, his heir or legal agent may revoke the gift. The heir or legal agent of the donor shall exercise the right of revocation within six months after he knows, or ought to know, the cause for revocation.

Article 194 Upon revocation of the gift, the person with the revocation right may claim restitution of the gifted property from the donee.

Article 195 If the donor's economic situation is deteriorated significantly, thereby seriously impacting on his business operation or family life, he may no longer perform the gift obligations.

Chapter 12 Contracts for Loan of Money

Article 196 A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and repays the borrowed money with interest thereon when it becomes due.

Article 197 A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise. The contents of a contract for loan of money include the terms such as the loan's type, currency, purpose, amount, interest rate, term and method of repayment, etc.

Article 198 In entering into a contract for loan of money, the lender may require the borrower to provide a guaranty. The guaranty shall conform to the provisions of the Security Law of the People's Republic of China.

Article 199 In entering into a contract for loan of money, the borrower shall provide true information concerning its business operation and financial condition in connection with the loan as required by the lender.

Article 200 No interest shall be deducted from the principal in advance. Where any interest amount is deducted from the principal in advance, the repayment of principal and calculation of interest shall be based on the actual amount borrowed.

Article 201 Where the lender fails to make the loan amount available on the agreed date and in the agreed amount, thereby causing losses to the borrower, it shall pay damages. Where the borrower fails to draw down on the agreed date and in the agreed amount, it shall nevertheless pay the interest on the agreed date and in the agreed amount.

Article 202 The lender may examine and monitor the application of the proceeds in accordance with the contract. The borrower shall periodically provide the lender with materials such as related financial and accounting reports, etc. in accordance with the contract.

Article 203 Where the borrower fails to use the proceeds for the prescribed purpose, the lender may withhold funding, call the loan, or terminate the contract.

Article 204 The interest rate on the loan provided by a financial institution engaged in lending operation shall be determined between the minimum and maximum rates fixed by the People's Bank of China.

Article 205 The borrower shall pay the interest at the agreed time. Where the time of interest payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, if the loan term is less than one year, the interest shall be paid together with the principal at the time of repayment; if the loan term is one year or longer, the interest shall be paid at the end of each annual period, and where the remaining period is less than one year, the interest shall be paid together with the principal at the time of repayment.

Article 206 The borrower shall repay the principal at the agreed time. Where the time of repayment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the borrower may repay at any time; and the lender may demand repayment from the borrower within a reasonable time limit.

Article 207 Where the borrower fails to repay the loan at the agreed time, it shall pay delayed repayment interest in accordance with the contract or the relevant provisions of the State.

Article 208 Where the borrower prepays the loan, unless otherwise agreed by the parties, the interest shall be calculated based on the actual period of loan.

Article 209 The borrower may apply to the lender for extension of the loan term before its maturity. Upon consent by the lender, the loan term may be extended.

Article 210 A contract for loan of money between natural persons becomes effective at the time the lender makes the loan amount available.

Article 211 Under a contract for loan of money between natural persons, if payment of interest is not agreed or the agreement is not clear, the loan is deemed interest free. Under a contract for loan of money between natural persons, the interest rate on the loan may not contravene the relevant

provisions of the State concerning limit on loan interest rate.

Chapter 13 Leasing Contracts

Article 212 A leasing contract is a contract whereby the lessor delivers to the lessee the lease item for it to use or accrue benefit from, and the lessee pays the rent.

Article 213 The contents of a leasing contract include terms such as the name, quantity and purpose of the lease item, lease term, amount of rent, time and method of rent payment, as well as maintenance and repair of the lease item, etc.

Article 214 The lease term may not exceed twenty years. If the lease term exceeds twenty years, the portion of the lease term beyond the initial twenty year period is invalid. At the end of the lease term, the parties may renew the lease, provided that the renewed term may not exceed twenty years commencing on the date of renewal.

Article 215 Where the lease term is six months or longer, the lease shall be in writing. If the parties fail to adopt a writing form, the lease is deemed a non-term lease.

Article 216 The lessor shall deliver the lease item to the lessee in accordance with the contract and shall, during the lease term, keep the lease item fit for the agreed purpose.

Article 217 The lessee shall use the lease item in the agreed manner. Where the manner of use of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the lease item shall be used in a manner consistent with its nature.

Article 218 Where the lessee uses the lease item in the agreed manner or in a manner consistent with its nature, thereby causing wear and tear to the lease item, it is not liable for damages.

Article 219 Where the lessee fails to use the lease item in the agreed manner or in a manner consistent with its nature, thereby causing damage to it, the lessor may terminate the contract and claim damages.

Article 220 The lessor shall perform the obligations of maintenance and repair of the lease item, except otherwise agreed by the parties.

Article 221 Where the lease item needs maintenance or repair, the lessee may require the lessor to perform maintenance or repair within a reasonable time limit. If the lessor fails to fulfill its obligations of maintenance or repair, the lessee may maintain or repair the lease item on its own at the lessor's expense. Where the lessee's use of the lease item is impaired due to maintenance or repair thereof, the rent shall be reduced or the lease term shall be extended accordingly.

Article 222 The lessee shall keep the lease item with due care and shall be liable for damages if the lease item is damaged or lost due to improper care.

Article 223 Subject to consent of the lessor, the lessee may make improvement on or addition to the lease item. If the lessee makes improvement on or addition to the lease item without consent of the lessor, the lessor may require the lessee to restore the lease item to its original condition or claim compensation for the losses.

Article 224 Subject to consent of the lessor, the lessee may sublease the lease item to a third party. Where the lessee subleases the lease item, the leasing contract between the lessee and the lessor remains valid, and if the third party causes damage to the lease item, the lessee shall compensate for the losses. Where the lessee subleases the lease item without the consent of the lessor, the lessor may terminate the contract.

Article 225 During the lease term, any benefit accrued from the possession or use of the lease item belongs to the lessee, except otherwise agreed by the parties.

Article 226 The lessee shall pay the rent at the agreed time. Where the time of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the rent shall be paid at the end of the lease term if it is less than one year; if the lease term is one year or longer, the rent shall be paid at the end of each annual period, and where the remaining period is less than one year, the rent shall be paid at the end of the lease term.

Article 227 Where the lessee fails to pay or delays in paying the rent without any reason, the lessor may require the lessee to pay the rent within a reasonable time limit. If the lessee fails to pay the rent at the end of such time limit, the lessor may terminate the contract.

Article 228 If due to any claim by a third party, the lessee is unable to use or accrue benefit from the lease item, the lessee may require reduction in rent or refuse to pay rent. In case of any claim by a third party, the lessee shall timely notify the lessor.

Article 229 Any change of ownership to the lease item does not affect the validity of the leasing contract.

Article 230 Where the lessor is to sell a dwelling unit under a lease, it shall give the lessee a notice within a reasonable time limit before the sale, and the lessee has the right of first refusal under the same conditions.

Article 231 Where the lease item is damaged or lost in part or in whole due to any reason not attributable to the lessee, the lessee may require reduction in rent or refuse to pay rent; where the purpose of the contract can not be achieved due to damage to or loss of the lease item in part or in whole, the lessee may terminate the contract.

Article 232 Where the term of a lease is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, such lease is deemed a non-term lease. Either party may terminate the contract at any time, provided that the lessor shall give the lessee a

reasonable advance notice before it terminates the contract.

Article 233 Where the lease item endangers the safety or health of the lessee, the lessee may terminate the contract at any time even if the lessee knows the lease item does not meet the quality requirements when concluding the contract.

Article 234 Where the lessee is deceased during the term of a dwelling unit lease, the person jointly living in the unit with the lessee while the lessee is alive may continue leasing it on the terms of the original leasing contract.

Article 235 The lessee shall return the lease item at the end of the lease term. The returned lease item shall be in a condition resulting from its use in the agreed manner or in a manner consistent with its nature.

Article 236 Upon expiration of the lease term, if the lessee continues to use the lease item without objection by the lessor, the original leasing contract remains effective, provided that it becomes a non-term lease.

Chapter 14 Financial Leasing Contracts

Article 237 A financial leasing contract is a contract whereby the lessor, upon purchase of the lessee-selected lease item from a lessee-selected seller, provides the lease item to the lessee for its use, and the lessee pays the rent.

Article 238 The contents of a financial leasing contract include terms such as the name, quantity, specifications, technical performance, and method of inspection of the lease item, the lease term, the rental components and the time, method and currency of payment, as well as the ownership of the lease item at the end of the lease term, etc. A financial leasing contract shall be concluded in writing.

Article 239 Under the sales contract concluded by the lessor according to the lessee's selection of the seller and the lease item, the seller shall deliver the subject matter to the lessee in accordance with the contract, and the lessee enjoys the rights of the buyer in respect of taking delivery of the subject matter.

Article 240 The lessor, the seller and the lessee may agree that any claim arising from the seller's failure in the performance of its obligations under the sales contract will be made by the lessee. Where the lessee makes such a claim, the lessor shall provide assistance.

Article 241 Without the consent of the lessee, the lessor may not amend any lessee-related term in the sales contract concluded by it according to the lessee's selection of the seller and the lease item.

Article 242 The lessor shall be entitled to the ownership of the lease item. In case the lessee goes

bankruptcy, the lease item is not part of its bankruptcy assets.

Article 243 Unless otherwise agreed by the parties, the rent under a financial leasing contract shall be determined based on the major portion of or full costs of purchasing the lease item and the lessor's reasonable profit.

Article 244 Where the lease item does not comply with the contract or is not fit for the intended purpose, the lessor is not liable, except where the lessee relies on the skills of the lessor in selecting the lease item or the lessor interferes with the selection thereof.

Article 245 The lessor shall give warranty in respect of the lessee's possession and use of the lease item.

Article 246 If in the possession of the lessee, the lease item causes personal injury or property damage to a third party, the lessor is not liable.

Article 247 The lessee shall keep and use the lease item with due care. While in possession of the lease item, the lessee shall perform the obligations of maintenance and repair thereof.

Article 248 The lessee shall pay the rent in accordance with the contract. Where the lessee fails to pay the rent within a reasonable time limit after receiving the demand for payment from the lessor, the lessor may require payment of the full rent; or it may terminate the contract and take back the lease item.

Article 249 Where the parties agree that the lease item shall belong to the lessee at the expiry of the lease term, the lessee has paid the majority of the rent but is unable to pay the remaining rent, and the lessor terminates the contract for this reason and takes back the lease item, if the value of the lease item taken back exceeds the rent and other expenses which the lessee owes to the lessor, the lessee may request the lessor to return a certain part.

Article 250 The lessor and the lessee may agree on the ownership of the lease item at the expiry of the lease term. Where ownership of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ownership of the lease item shall belong to the lessor.

Chapter 15 Contracts for Work

Article 251 A contract for work is a contract whereby the contractor shall, in light of the requirements of the ordering party, complete certain work and deliver the results therefrom, and the ordering party pays the remuneration therefor. Work includes processing, ordering, repairing, duplicating, testing, inspecting, etc..

Article 252 The contents of a contract for work shall contain such clauses as the subject matter, quantity, quality, remuneration, method of the work, supply of materials, term of performance,

standards and method of inspection.

Article 253 The contractor shall use its own equipment, skills and labor to complete the main part of the work, except as otherwise agreed upon by the parties. Where the contractor assigns the contracted work to a third party for completion, the contractor shall be responsible to the ordering party in respect of the work results completed by the ordering party. Where the assignment is not approved by the ordering party, the ordering party may terminate the contract.

Article 254 The contractor may assign some ancillary work contracted to a third party for completion. Where the contractor assigns some ancillary work to a third party for completion, the contractor shall be responsible to the ordering party for the work result completed by a third party.

Article 255 Where the contractor is to supply the materials, the contractor shall select the materials in accordance with the contract and shall make such materials available for inspection by the ordering party.

Article 256 Where the ordering party is to supply the materials, it shall supply the materials in accordance with the contract. The contractor shall timely inspect the materials supplied by the ordering party, and if it discovers that they do not conform to the agreement in the contract, it shall timely notify the ordering party to replace them or supply what is lacking or take other remedial measures. The contractor may not replace the materials supplied by the ordering party without authorization, and may not replace any components which do not need to be repaired.

Article 257 Where the contractor discovers that the drawings or technical requirements provided by the ordering party are unreasonable, it shall timely notify the ordering party. Where any losses are caused to the contractor due to the indolent reply of the ordering party and other reasons, the ordering party shall be liable for making compensation.

Article 258 Where the ordering party changes its requirements for the contracted work while the work is under way, thereby causing losses to the contractor, the ordering party shall be liable for making compensation.

Article 259 Where the performance of the contracted work requires assistance of the ordering party, the ordering party shall have the obligation to provide assistance. Where the contracted work is unable to be completed due to the ordering party's failure in fulfilling its obligation of assistance, the contractor may urge the ordering party to perform its obligation within a reasonable time limit and may extend the term of its performance; where the ordering party fails to perform such obligation within the time limit, the contractor may terminate the contract.

Article 260 In the period of working, the contractor shall accept the necessary supervision over and inspection of the work by the ordering party. The ordering party may not obstruct the normal work of the contractor with the supervision and inspection.

Article 261 Upon the completion of the contracted work, the contractor shall deliver the work

results to the ordering party and shall submit necessary technical materials and the relevant quality certificate. The ordering party shall conduct acceptance inspection of the work results.

Article 262 Where the work results delivered by the contractor fail to meet the quality requirements, the ordering party may request the contractor to bear the liabilities for the breach of contract by way of repairing, remaking, reducing remuneration, or making compensation.

Article 263 The ordering party shall pay the remuneration at the agreed time limit. Where the time limit of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ordering party shall pay it at the time when the contractor delivers the work results; where the work results are partially delivered, the ordering party shall make payment accordingly.

Article 264 Where the ordering party fails to pay the remuneration or cost for the materials, etc. to the contractor, the contractor is entitled to lien upon the work results, except as otherwise agreed upon by the parties.

Article 265 The contractor shall keep the materials supplied by the ordering party and the completed work results with due care, and shall be liable for damages in case of any damage or losses due to improper care.

Article 266 The contractor shall keep the relevant information confidential as required by the ordering party, and may not retain any replica or technical material without permission of the ordering party.

Article 267 Joint contractors are jointly and severally liable to the ordering party, except as otherwise agreed upon by the parties.

Article 268 The ordering party may terminate the contract at any time, but it shall bear the liability for making compensation for losses, if the contractor suffers losses therefrom.

Chapter 16 Contracts for Construction Projects

Article 269 A contract for construction project is a contract whereby the contractor performs project construction, and the developer pays the price. Contracts for construction projects include contracts for survey, design, and construction.

Article 270 A contract for construction project shall be in written form.

Article 271 Tendering for a construction project shall be conducted in an open, fair and impartial manner in accordance with the relevant laws.

Article 272 The developer may enter into a contract for construction project with a prime contractor, or enter into contracts for survey, design, and construction with the surveyor, designer,

and constructor respectively. The developer may not divide a construction project which should be completed by one contractor into several parts and contract them out to several contractors. Subject to consent by the developer, the prime contractor or the contractor for survey, design, or construction may delegate part of the contracted work to a third party. The third party and the prime contractor or the contractor for survey, design, or construction shall be jointly and severally liable to the developer in respect of the work product completed by such third party. The contractor may not assign in whole to any third party the contracted construction project, or divide the whole contracted construction project into several parts and separately assign each part to a third party under the guise of sub-contracting. The contractor is prohibited from sub-contracting any part of the project to an entity not appropriately qualified. A sub-contractor is prohibited from further sub-contracting its contracted work. The main structure of the construction project must be constructed by the contractor itself.

Article 273 A contract for a major state construction project shall be concluded in accordance with the procedure prescribed by the state and in compliance with the state-approved documents such as the investment plan and feasibility studies report, etc.

Article 274 A contract for survey or design includes terms such as the time limit for submission of the relevant basic information and documents (including budget estimate), the quality requirements, fees, and other conditions of cooperation, etc.

Article 275 A construction contract includes terms such as the scope of the project, the construction period, the time for commencement and completion of any work to be commissioned in the interim, the quality of the project, the cost of the project, the time for delivery of technical materials, the responsibilities for the supply of materials and equipment, the appropriation of funds and settlement of account, inspection upon completion of the project, the scope and period of quality warranty, and cooperation between the parties, etc.

Article 276 Where the construction project is subject to supervision, the developer shall enter into an agency appointment contract for project supervision with a project supervisor in writing. The rights, obligations and associated legal liabilities of the developer and supervisor shall be prescribed in accordance with the provisions hereof concerning agency appointment contracts and the provisions of other relevant laws and administrative regulations.

Article 277 Provided that the developer does not interfere with the normal operation of the contractor, it may inspect the progress and quality of the work at any time.

Article 278 In the case of concealed work, the contractor shall give the developer notice for inspection prior to concealment. Where the developer fails to timely conduct inspection, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or work slowdown, etc.

Article 279 Upon completion of the construction project, the developer shall conduct acceptance inspection according to the construction drawings and specifications, and in accordance with the

rules of construction inspection and quality inspection standard prescribed by the state. Once the construction project has passed the acceptance inspection, the developer shall pay the prescribed price and accept the construction project. The completed construction project may be put into use only after it has passed the acceptance inspection; if the construction project has not been inspected or has failed the inspection, it may not be put into use.

Article 280 Where the developer sustains any loss from construction delay due to non-compliance of the survey or design or due to delayed delivery of the survey or design documents, the surveyor or the designer shall continue to improve the survey or design, reduce or forgo the survey fee or design fee, and pay damages.

Article 281 Where the construction project fails to meet the prescribed quality requirements due to any reason attributable to the constructor, the developer is entitled to require the constructor to repair, re-construct or make alteration free of charge within a reasonable time. Where delivery of the project is delayed due to such repair, re-construction or alteration, the constructor shall be liable for breach of contract.

Article 282 Where the construction project caused personal injury and property damage during its reasonable usage period due to any reason attributable to the contractor, the contractor shall be liable for damages.

Article 283 Where the developer fails to provide raw materials, equipment, site, funds, or technical information at the prescribed time and in accordance with the contractual requirements, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or slowdown, etc.

Article 284 If an ongoing project is stopped or delayed due to any reason attributable to the developer, the developer shall take the appropriate measures to make up or mitigate the loss, and shall indemnify the contractor for its loss and out-of-pocket expenses arising from resulting work stoppage, slowdown, reshipment, re-dispatch of mechanical equipment, and excess inventory of materials and assemblies, etc.

Article 285 Where in the course of survey or design, any repeating work, work stoppage or change of design occurs due to the developer's change of plan, the incorrect information provided by it, or its failure to provide the working conditions necessary for the survey or design at the prescribed time, the developer shall increase the fees in light of the actual amount of work done by the surveyor or designer.

Article 286 If the developer failed to pay the price in accordance with the contract, the contractor may demand payment from the developer within a reasonable period. Where the developer fails to pay the price at the end of such period, the contractor may enter into an agreement with the developer to liquidate the project, and may also petition the People's Court to auction the project in accordance with the law, unless such project is not fit for liquidation or auction in light of its nature. The construction project price shall be paid in priority out of proceeds from the liquidation

or auction of the project.

Article 287 A matter not provided for in this Chapter shall be governed by the relevant provision governing contracts of hired works.

Chapter 17 Transportation Contracts

Section One General Provisions

Article 288 A transportation contract is a contract whereby the carrier carries passengers or cargoes from the starting place of carriage to the agreed destination, and the passenger, consignor or consignee pays for the ticket-fare or freight.

Article 289 A carrier engaged in public transportation may not refuse the normal and reasonable carriage request of a passenger or consignor.

Article 290 The carrier shall safely carry the passengers or cargoes to the agreed destination within the agreed time or within a reasonable time.

Article 291 The carrier shall carry the passengers or cargoes to the agreed destination via the agreed route or the customary carriage route.

Article 292 A passenger, a consignor or a consignee shall pay the ticket-fare or freight. Where the carrier fails to carry the passengers or the cargoes via the agreed or customary carriage route, thereby increasing the ticket-fare or freight, the passenger, consignor or consignee may refuse to pay any increased portion thereof.

Section Two Passenger Transportation contracts

Article 293 A passenger transportation contract is established upon the carrier's delivery of the passenger ticket to the passenger, except as otherwise agreed upon by the parties or there are other transaction practices.

Article 294 The passenger shall board the means of transportation with a valid passenger ticket. If the passenger boards without a ticket, exceeds the distance paid for, takes a higher class or higher berth than booked, or boards with an invalid ticket, he shall make up the payment for an appropriate ticket, and the carrier may charge an additional payment in accordance with the relevant provisions. Where the passenger fails to pay the ticket-fare, the carrier may refuse to carry.

Article 295 Where the passenger is unable to board the means of transportation at the time stated on the passenger ticket due to any reason attributable to himself, he shall undergo the formalities for ticket cancellation and refund or for ticket modification within the agreed period. Where the passenger fails to do so within the time period, the carrier may refuse to refund the ticket-fare, and

no longer bear the obligation of carriage.

Article 296 In the course of carriage, the passenger's carry-on luggage shall be within the agreed limit of quantity. Where the luggage exceeds the agreed limit of quantity, the additional luggage shall be checked in.

Article 297 The passenger may not bring with him or pack in the luggage such dangerous Articles as are flammable, explosive, toxic, corrosive, or radioactive as well as those that might endanger the safety of life and property on board the means of transportation or other contraband Articles. Where the passenger violates the provisions of the preceding paragraph, the carrier may unload, destroy or turn over to the relevant authority the contraband Articles. Where the passenger insists on carrying in person or placing in his luggage the contraband Articles, the carrier shall refuse to carry.

Article 298 The carrier shall timely inform the passenger of any major causes hindering the normal carriage and the matters which shall be noted for purpose of safety carriage.

Article 299 The carrier shall carry the passenger according to the time and the carriage schedule stated on the passenger ticket. Where the carrier delays in carriage, it shall, upon request by the passenger, either arrange the passenger to take other flights or numbers or refund the ticket-fare.

Article 300 Where the carrier unilaterally changes the means of transportation, thereby lowering the standards of service, it shall, upon request by the passenger, refund the ticket-fare or lower the price of the ticket; where the service standards are enhanced, no additional ticket-fare shall be charged.

Article 301 In the course of carriage, the carrier shall give its best efforts to assist the passenger who is seriously ill, or who is giving birth to a child or whose life is at risk.

Article 302 The carrier shall be liable for damages in case of injury or death of the passenger in the course of carriage, except where such injury or death is attributable to the passenger's own health, or the carrier proves that such injury or death is caused by the passenger's intentional misconduct or gross negligence. The provisions in the preceding paragraph apply to a passenger who is exempted from buying a ticket or holds a preferential ticket pursuant to the relevant provisions, or who is permitted by the carrier to be on board without a ticket.

Article 303 Where an Article that the passenger takes with him on board is damaged or destroyed during the period of carriage, the carrier shall be liable for the damage if it has committed faults. Where the passenger's check-in luggage is damaged or lost, the relevant provisions on the carriage of cargoes shall be applied.

Section Three Cargo Transportation contracts

Article 304 In undergoing the formalities for cargoes, the consignor shall precisely indicate to

carrier the name of the consignee or the consignee by order, the name, nature weight, amount and the place for taking delivery of the cargoes, and other information necessary for cargo carriage. Where the carrier suffers from damage due to untrue declaration or omission of important information by the consignor, the consignor shall be liable for damages.

Article 305 Where carriage of the cargo is subject to such procedures as examination and approval or inspection, the consignor shall submit to the carrier the documents of fulfillment of the relevant procedure.

Article 306 The consignor shall pack the cargo in the agreed manner. Where the packing manner is not agreed or the agreement is not clear, the provisions of Article 156 of this Law shall be applied. Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry.

Article 307 In consigning any dangerous Articles which are inflammable, explosive, toxic, corrosive, or radioactive, the consignor shall, in accordance with the provisions of the State on the carriage of dangerous Articles, properly pack the dangerous Articles and affix thereon signs and labels for dangerous Articles, and shall submit the written papers relating to the number and measures of precaution to the carrier. If the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry, and may also take corresponding measures to avoid losses, expenses thus caused shall be borne by the consignor .

Article 308 Prior to carrier's delivery of the cargoes to the consignee, the consignor may request the carrier to suspend the carriage, return the cargoes, change the destination or deliver the cargoes to another consignee, but it shall compensate the carrier for any losses thus caused.

Article 309 Upon arrival of the cargoes, if the carrier has the knowledge of the consignee, it shall timely notify the consignee and the consignee shall timely take delivery. Where the consignee takes delivery exceeding the time limit, it shall pay such expenses as storage of the goods, etc.

Article 310 Upon taking delivery of the cargoes, the consignee shall inspect the cargoes at the agreed time. Where the time for inspection is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the consignee shall inspect the cargo within a reasonable time limit. The consignee's failure to raise any objection on the quantity of, or any damage to, the cargoes within the agreed time limit or within a reasonable time limit is deemed prima facie evidence of delivery by the carrier in compliance with the description in the transportation documents.

Article 311 The carrier is liable for damages in case of damage to or loss of the cargoes in the course of carriage, provided that it is not liable for damages if it proves that such damage to or loss of the cargoes is caused by force majeure, the intrinsic characteristics of the cargoes, reasonable depletion, or the fault of the consignor or consignee.

Article 312 Where the parties agree on the amount of damages in case of damage to or loss of the

cargoes, the damages payable is the agreed amount; if the amount of damages is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be calculated on the basis of the prevailing market price at the destination when the cargoes are or ought to be delivered. Where a law or administrative regulation provides otherwise in respect of the measures for the calculation of damages and of the ceiling of the amount of damages, these provisions shall be applied.

Article 313 Where two or more carriers jointly carry the cargoes using the same means of transportation, the carrier contracting with the consignor shall be responsible for the whole course of carriage. Where the losses occurred at a particular segment, the carrier contracting with the consignor and the carrier for such segment are jointly and severally liable.

Article 314 Where the cargoes are lost in the course of carriage due to force majeure, if the freight has not been collected, the carrier may not request the payment thereof; if the freight has been collected, the consignor may request the refund of the freight.

Article 315 Where the consignor or consignee fails to pay the freight, storage fees and other carriage expenses, the carrier is entitled to lien on the relevant carried cargoes, except as otherwise agreed upon by the parties.

Article 316 Where the consignee is not clear or refuses to take delivery of the cargoes without justified reasons, the carrier may place the cargo in escrow according to the provisions of Article 101 of this Law.

Section Four Multi-modal Transportation contract

Article 317 A multi-modal carriage operator is responsible for performing, or arranging for performance of, the multi-modal transportation contract, and it enjoys the rights and assumes the obligations of a carrier throughout the course of carriage.

Article 318 The multi-modal carriage operator and the segment carriers may enter into agreements on their respective duties concerning each segment, provided that the obligations of the multi-modal carriage operator with respect to the entire course of carriage are not affected by any such agreement.

Article 319 Upon receipt of the cargo delivered by the consignor, the multi-modal carriage operator shall issue thereto a multi-modal carriage document. The multi-modal carriage document may either be assignable or non-assignable as required by the consignor.

Article 320 Where the multi-modal carriage operator sustains any loss due to the fault of the consignor in the course of consigning the cargo, the consignor shall be liable for damages notwithstanding its subsequent assignment of the multi-modal carriage document.

Article 321 Where damage to or loss of the cargo occurred within a particular segment of the

course of a multi-modal carriage, the multi-modal carriage operator's liability for damages and any limitation thereon are governed by the applicable transportation law of the jurisdiction which such segment is under. Where the segment in which the cargo is damaged or lost cannot be determined, the liability for damages shall be borne in accordance with the provisions of this Chapter.

Chapter 18 Technology Contracts

Section One General Provisions

Article 322 A technology contract is a contract the parties conclude for establishing their rights and obligations in respect of the development or transfer of technology, or in respect of technical consulting or service.

Article 323 The conclusion of a technology contract shall be conducive to the advancement of science and technology, and expedite the conversion, application and dissemination of scientific and technological achievements.

Article 324 The contents of a technology contract shall be agreed upon by the parties, and shall contain the following clauses in general:

- (1) project name;
- (2) contents, scope and requirement of the subject matter;
- (3) the plan, schedule, period, place, territory and method of performance;
- (4) confidentiality of technical information and materials;
- (5) allocation of responsibilities for risks;
- (6) ownership of the technology and allocation of benefits accrued therefrom;
- (7) standard applicable to and method of acceptance test;
- (8) price, remuneration or licensing fee and the method of payment;
- (9) liquidated damages or method for calculation of damages;
- (10) method of dispute resolution;
- (11) definition of terms and phrases.

The parties may agree to include the following materials relating to the performance of the contract as an integral part thereof: technical background information, feasibility studies and technical evaluation report, project task matrix and project plan, technical standard, technical specifications, original design and technique documents, as well as other technical documentation. Where the technology contract involves any patent, it shall set forth the name of the invention or innovation, the patent applicant and the patentee, the date of application, the application number, patent number and the term of the patent.

Article 325 The method for payment of the price, remuneration or licensing fee under a technology contract shall be agreed upon by the parties, who may agree upon lump-sum payment based on one-time calculation or installment payment based on one-time calculation, and may also agree upon royalty payment or royalty payment plus advance payment of initial fee. Where a royalty payment method is agreed upon, the royalty may be calculated as a percentage of the product price, any increase in product value resulting from exploitation of the patent or use of the

technical secret, profit, or product sales, and may also be calculated by any other method agreed upon by the parties. The royalty rate may be fixed or subject to annual increase or decrease. Where a royalty payment is agreed, the parties shall agree in the contract a method for inspection of the relevant accounting books.

Article 326 Where the right to use and the right to transfer job-related technology belong to a legal person or an organization of any other nature, the legal person or organization may enter into a technology contract in respect of such job-related technology. The legal person or organization shall reward or remunerate the individual(s) who developed the technology with a percentage of the benefits accrued from the use and transfer of the job-related technology. Where the legal person or organization is to enter into a technology contract for the transfer of the job-related technology, the individual who accomplished this technological achievement shall have the priority to be the transferee under the same conditions. A job-related technology is a technology developed in the course of completing a task assigned by a legal person or an organization of any other nature, or developed by primarily utilizing the material and technical resources thereof.

Article 327 The right to use and the right to transfer non-job-related technology belong to the individual developer, who may enter into a technology contract in respect thereof.

Article 328 The individual who developed the technology is entitled to identify himself as the developer in the documentation related thereto, and to receive honor certificate and reward.

Article 329 A technology contract which illegally monopolizes technology, impairs technological advancement or infringes on the technology of a third party is invalid.

Section Two Technology Development Contract

Article 330 A technology development contract is a contract concluded in respect of the development of a new technology, product, technique or material and the associated system. Technology development contracts include commissioned development contracts and cooperative development contracts. A technology development contract shall be in written form. A contract on the conversion of a scientific achievement with potential for industrial application is governed by reference to the provisions on technology development contracts.

Article 331 The commissioning party under a commissioned development contract shall, in accordance with the contract, provide development funds and pay remuneration; supply technical materials and original data; complete its tasks of cooperation; and accept the developed technology.

Article 332 The developer under a commissioned development contract shall, in accordance with the contract, prepare and implement the development plan; use development funds in a reasonable manner; timely complete the development and deliver the developed technology, as well as provide the relevant technical materials and necessary technical guidance so as to help the commissioning party master the technology developed.

Article 333 Where the commissioning party breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 334 Where the developer breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 335 Parties to a cooperative development contract shall, in accordance with the contract, make investment, including investment in the form of technology; participate in the development by performing their respective tasks; and cooperate with each other in the development.

Article 336 Where a party to a cooperative development contract breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 337 Where the technology which is the subject matter of a technology development contract is made public by a third party, thereby making the performance of the technology development contract meaningless, the parties may terminate the contract.

Article 338 If, in the course of implementing a technology development contract, the development is failed in whole or in part due to any insurmountable technical difficulty, allocation of the responsibility for such risk shall be agreed upon by the parties. Where the allocation of responsibility for such risk is not agreed upon or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be shared by the parties in a reasonable manner. Where a party discovers any circumstance which may lead to the failure of the development in whole or in part as described in the preceding paragraph, it shall timely notify the other party and take the appropriate measures to mitigate loss; where the party fails to timely notify the other party and take the appropriate measures, thereby enlarging the losses, it shall be liable for the enlarged losses.

Article 339 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or innovation resulting from a commissioned development belongs to the developer. Where the developer is granted a patent, the commissioning party may exploit such patent free of charge. Where the developer is to assign the right to apply for patent on the invention or innovation resulting from the commissioned development, the commissioning party shall have the right to priority in acquiring such right under the same conditions.

Article 340 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or innovation resulting from a cooperative development belongs to the parties therein jointly. Where a party is to assign its joint patent application right, the other parties shall have the right to priority in acquiring such right under the same conditions. Where a party in the cooperative development declares a waiver of its joint patent application right, the other party may apply by itself, or the other parties may jointly apply, as the case may be. Where a patent is granted on the invention or innovation, the party waiving its patent application right may exploit such patent free of charge. If a party in the cooperative development does not consent to the

application for patent, the other party or parties may not apply for patent.

Article 341 The right to use and transfer the technical secret resulting from a commissioned or cooperative development, and the method for allocation of benefits accrued therefrom shall be agreed upon by the parties. Where such matters are not agreed or the agreement is not clear, nor can they be determined in accordance Article 61 of this Law, all of the parties are entitled to use and transfer the technology, provided that the developer in a commissioned development may not transfer the technology to a third party before it delivers the technology to the commissioning party.

Section Three Technology Transfer Contracts

Article 342 Technology transfer contracts include contracts for the assignment of patent, assignment of patent application right, transfer of technical secrets, and patent licensing. A technology transfer contract shall be in written form.

Article 343 A technology transfer contract may set forth the scope of exploitation of the patent or the use of the technical secret by the transferor and the transferee, provided that it may not restrict technological competition and technological development.

Article 344 A patent licensing contract is only valid during the term of the patent. Where the term of the patent expires or the patent is invalidated, the patentee may not enter into a patent licensing contract with any other person in respect thereof.

Article 345 The transferor under a patent licensing contract shall, in accordance with the contract, license the patent to the transferee, deliver the technical materials related to the exploitation of the patent, and provide the necessary technical guidance.

Article 346 The transferee under a patent licensing contract shall exploit the patent in accordance with the contract and may not license the patent to any third party except as provided for in the contract; and shall pay the licensing fee in accordance with the contract.

Article 347 The transferor under a contract for transfer of technical secret shall, in accordance with the contract, supply the technical materials, provide technical guidance, and warrant the practical applicability and reliability of the technology, and shall abide by its confidentiality obligations.

Article 348 The transferee under a contract for transfer of technical secret shall, in accordance with the contract, use the technology, pay the licensing fee and abide by its confidentiality obligations.

Article 349 The transferor under a technology transfer contract shall warrant that it is the lawful owner of the technology provided, and shall warrant that the technology provided is complete, free from error, effective, and capable of achieving the prescribed goals.

Article 350 The transferee under a technology transfer contract shall, in conformity with the scope and the time period as agreed upon in the contract, abide by its confidentiality obligations in respect of the non-public and secret portion of the technology provided by the transferor.

Article 351 Where the transferor fails to transfer technology in accordance with the contract, it shall refund the licensing fee in part or in whole, and shall be liable for the breach of contract; where the transferor exploits the patent or uses the technical secret beyond the agreed scope, or unilaterally allows the patent to be exploited or the technical secret to be used by a third party in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferor breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 352 Where the transferee fails to pay the agreed licensing fee, it shall pay the overdue licensing fee and pay breach of contract damages in accordance with the contract; where it fails to pay the overdue licensing fee and breach of contract damages, it shall cease exploitation of the patent or use of the technical secret, return the technical materials, and be liable for the breach of contract; where the transferee exploits the patent or uses the technical secret beyond the agreed scope, or allows the patent to be exploited or the technical secret to be used by a third party without consent of the transferor in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferee breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 353 Where the exploitation of the patent or the use of the technical secret by the transferee in accordance with the contract infringes on the lawful interests of any other person, the liability shall be borne by the transferor, except as otherwise agreed upon by the parties.

Article 354 The parties may, on the basis of mutual benefit, provide in the technology transfer contract for the method of sharing any subsequent improvement resulting from the exploitation of the patent or use of the technical secret. If such method is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, neither party is entitled to share any subsequent improvement made by the other party.

Article 355 Where the relevant laws or administrative regulations provide otherwise in respect of technology import or export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail.

Section Four Technical Consulting Contracts and Technical Service Contracts

Article 356 Technical consulting contracts include contracts for provision of feasibility studies, technical forecast, specialized technical investigation, and analysis and evaluation report, etc. in respect of a particular technical project. A technical service contract means a contract whereby one party solves a particular technical problem for the other party by utilizing its technical knowledge, excluding a contract for construction project or a contract of hired work.

Article 357 The client under a technical consulting contract shall, in accordance with the contract, describe the problem on which consultancy is sought, provide the technical background information as well as related technical materials and data; and accept the work product from, and pay the remuneration to, the consultant.

Article 358 The consultant under a technical consulting contract shall complete the consulting report or answer the question within the agreed period; the consulting report submitted shall comply with the requirements set forth in the contract.

Article 359 Where the client under a technical consulting contract fails to provide the necessary materials and data in accordance with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work result, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration. Where the consultant under the technical consulting contract fails to provide the consulting report within the agreed period or the consulting report submitted does not comply with the contract, it shall be liable for the breach of contract by way of reducing or foregoing the remuneration, etc. The client under a technical consulting contract shall compensate the loss resulting from any decision made by it based on the complying consulting report and opinion provided by the consultant, except as otherwise agreed upon by the parties.

Article 360 The client under a technical service contract shall, in accordance with the contract, provide the working conditions and complete its tasks of cooperation; accept the work results and pay the remuneration.

Article 361 The service provider under a technical service contract shall, in accordance with the contract, complete the services, solve the technical problem, warrant the quality of its work, and communicate the knowledge for solving the technical problem.

Article 362 Where the client under a technical service contract fails to perform its contractual obligations, or the performance is not in conformity with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work results, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration. Where the service provider under a technical service contract fails to complete services in accordance with the contract, it shall be liable for the breach of contract by way of forgoing the remuneration, etc.

Article 363 In the course of performing a technical consulting contract or a technical service contract, any new technology developed by the consultant or service provider utilizing the technical materials and working conditions provided by the client belongs to the consultant or service provider. Any new technology developed by the client utilizing the work results provided by the consultant or service provider belongs to the client. However, if the parties agree otherwise in the contract, such provisions shall prevail.

Article 364 Where a relevant law or administrative regulation provides otherwise in respect of

technology intermediary service contracts or technical training contracts, such provisions shall prevail.

Chapter 19 Storage Contracts

Article 365 A storage contract is a contract whereby the depository keeps the deposit delivered by the depositor, and eventually returns it thereto.

Article 366 The depositor shall pay the storage fee to the depository in accordance with the contract. Where the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage shall be for free.

Article 367 A storage contract is established upon delivery of the deposit, except as otherwise agreed upon by the parties.

Article 368 Upon the depositor's delivery of the deposit to the depository, the depository shall issue a deposit voucher thereto, except as otherwise practised in transaction.

Article 369 The depository shall keep the deposit with due care. The parties may agree the place and manner of storage. The place and manner of storage may not be changed without authorization, except in an emergency situation or for the purpose of protecting the depositor's interests.

Article 370 Where the deposit delivered by the depositor has defects or requires special storage measures in light of its nature, the depositor shall inform the depository of the relevant situation. Where the depositor fails to inform, thereby causing damage to the deposit, the depository is not liable for damages; where the depository sustains any loss as a result, the depositor shall be liable for damages, except where the depository is, or ought to be, aware of the situation and fails to take remedial measures.

Article 371 The depository may not delegate storage of the deposit to a third party, except as otherwise agreed upon by the parties. Where the depository delegated storage of the deposit to a third party in violation of the provisions of the preceding paragraph, thereby causing damage to the deposit, the depository shall be liable for damages.

Article 372 The depository may not use, or allow the use of, the deposit, except as otherwise agreed upon by the parties.

Article 373 Where a third party makes a claim on the deposit, the depository shall perform its obligation of returning the deposit to the depositor, except where an order of preservation or enforcement is carried out in respect of the deposit in accordance with the law. Where a third party brings a lawsuit against the depository or applies for attachment of the deposit, the depository shall timely notify the depositor.

Article 374 If the deposit is damaged or lost due to improper storage by the depository during the deposit period, the depository shall be liable for damages, provided that if the storage is provided for free, and the depository proves that it has no gross negligence, it shall be not liable for damages.

Article 375 Where the depositor is to deposit money, securities, or any other valuable item for storage, it shall make a declaration to the depository on such item, which shall be inspected or sealed by the depository. Where the depositor fails to make such declaration and the Article is damaged, destroyed or lost afterwards, the depository may compensate for it as it is an ordinary Article.

Article 376 The depositor may retrieve the deposit at any time. Where a deposit period is not agreed or the agreement is not clear, the depository may require the depositor to retrieve the deposit at any time; where a deposit period is agreed, without special reason, the depository may not require the depositor to retrieve the deposit before the expiry of the deposit period.

Article 377 At the expiry of the deposit period, or if the depositor retrieves the deposit before the expiry of the deposit period, the depository shall return the original item together with any fruit thereof to the depositor.

Article 378 Where the depository keeps money deposit, it may return money of the same type and quantity. Where the depository keeps any other fungible item, it may return any item of the same type, quality and quantity in accordance with the contract.

Article 379 Under a storage contract for value, the depositor shall pay to the depository the storage fee at the agreed time. Where the time of payment of the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage fee shall be paid at the same time the deposit is retrieved.

Article 380 Where the depositor fails to pay the storage fee and other expenses, the depository is entitled to lien on the deposit, unless as otherwise agreed upon by the parties.

Chapter 20 Warehousing Contracts

Article 381 A warehousing contract is a contract whereby the safekeeping party stores the goods delivered by the depositor, and the depositor pays the warehousing fee.

Article 382 A warehousing contract becomes effective upon its formation.

Article 383 Where the depositor intends to store any dangerous Article which is inflammable, explosive, toxic, corrosive, or radioactive, etc., or any material susceptible to deterioration, it shall indicate the nature of the goods and provide the relevant information. Where the depositor violates the provisions of the preceding paragraph, the safekeeping party may reject the goods and may also take the appropriate measures to avoid losses, the cost consequently incurred shall be borne

by the depositor. Where the safekeeping party is to store any dangerous Article that is inflammable, explosive, toxic, corrosive, or radioactive, etc., it shall be equipped with the appropriate safekeeping conditions.

Article 384 The safekeeping party shall, in accordance with the contract, conduct warehouse-in inspection of the goods. Where in the course of such inspection, the safekeeping party discovers that the goods are not in conformity with the terms of the contract, it shall timely notify the depositor. After inspection and acceptance by the safekeeping party, if it is discovered that the category, quantity or quality of the warehousing goods are not in conformity with the terms of the contract, the safekeeping party shall be liable for damages.

Article 385 Upon the depositor's delivery of the goods, the safekeeping party shall issue a warehouse receipt.

Article 386 The safekeeping party shall sign or affix a seal on the warehouse receipt. The warehouse receipt shall contain the following items:

- (1) name and domicile of the depositor;
- (2) category, quantity, quality, and package, number of pieces and marks of the warehousing goods;
- (3) standards of spoilage of the warehousing goods;
- (4) place of storage;
- (5) time period of storage;
- (6) warehousing fee;
- (7) if the goods have been insured, the insured amount, term of insurance and the name of the insurer;
- (8) name of the person issuing the warehouse receipt, the place and the date of issuance.

Article 387 The warehouse receipt is the voucher for retrieving the goods. Where the depositor or holder of the warehouse receipt has endorsed the warehouse receipt and the safekeeping party has signed or sealed thereon, the right to retrieve the goods may be assigned.

Article 388 Upon request of the depositor or the holder of the warehouse receipt, the safekeeping party shall allow the person to inspect the goods or take samples therefrom.

Article 389 Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, it shall timely notify the depositor or holder of the warehouse receipt.

Article 390 Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, thereby endangering the safety and normal safekeeping of other warehoused goods, it shall demand disposal of the goods by the depositor or the holder of the warehouse receipt as necessary. In an emergency situation, the safekeeping party may dispose of the goods as necessary, but shall timely notify the depositor or holder of the warehouse receipt of the situation.

Article 391 Where the warehousing period is not agreed or the agreement is not clear, the depositor or holder of the warehouse receipt may retrieve the goods at any time, and the safekeeping party may require the depositor or holder of the warehouse receipt to retrieve the goods at any time, provided that the other party shall be given the time required for preparation.

Article 392 At the expiry of the warehousing period, the depositor or holder of the warehouse receipt shall retrieve the goods by presenting the warehouse receipt to the safekeeping party. Where the depositor or holder of the warehouse receipt fails to claim the goods, additional warehousing fee shall be charged; where the goods are retrieved before the expiry the warehousing period, the warehousing fee shall not be reduced.

Article 393 At the expiry of the warehousing period, if the depositor or holder of the warehouse receipt fails to retrieve the goods, the safekeeping party may demand retrieval within a reasonable period, and if the goods are not retrieved at the expiry of such period, the safekeeping party may place the goods in escrow.

Article 394 Where the goods are damaged or lost during the warehousing period due to improper safekeeping by the safekeeping party, it shall be liable for damages. If the goods are deteriorated or damaged due to unconformity of the nature of the warehoused goods or of the packing with the terms of the contract, or the fact that the goods exceed the valid storage period, the safekeeping party is not liable for damages.

Article 395 Matters not provided for in this Chapter shall be governed by the relevant provision on storage contracts.

Chapter 21 Commission Contracts

Article 396 A commission contract is a contract whereby the principal and the agent agree that the agent will handle the principal's affairs.

Article 397 The principal may specifically appoint the agent to handle one or more of its affairs, or generally appoint the agent to handle all of its affairs.

Article 398 The principal shall prepay the expenses for handling the commissioned affair. Any expense necessary for handling the commissioned affair advanced by the agent shall be repaid with interest by the principal.

Article 399 The agent shall handle the commissioned affair in accordance with the instruction of the principal. Any required deviation from the principal's instruction is subject to consent by the principal; in an emergency where the agent has difficulty in contacting the principal, the agent shall properly handle the commissioned affair, provided that thereafter the agent shall timely notify the principal of the situation.

Article 400 The agent shall personally handle the commissioned affair. Subject to consent by the

principal, the agent may delegate the agency to a third party. If the delegation is approved, the principal may issue instructions concerning the commissioned affair directly to the delegate, and the agent is only responsible for its selection of the delegate or its own instruction thereto. Where the agency is delegated without consent, the agent shall be liable for any act of the delegate, except in an emergency where the agent needs to delegate the agency in order to safeguard the interests of the principal.

Article 401 Upon request by the principal, the agent shall report on the progress of the commissioned affair. Upon discharge of the commission contract, the agent shall render an account of the commissioned affair.

Article 402 Where the agent, acting within the scope of authority granted by the principal, enter into a contract in its own name with a third party who is aware of the agency relationship between the principal and agent, the contract is directly binding upon the principal and such third party, except where there is conclusive evidence establishing that the contract is only binding upon the agent and such third party.

Article 403 Where the agent enter into a contract in its own name with a third party who is not aware of the agency relationship between the agent and the principal, if the agent fails to perform its obligation toward the principal due to any reason attributable to such third party, the agent shall disclose the third party to the principal, allowing it to exercise the agent's rights against such third party, except where the third party will not enter into the contract with the agent if he knows the identity of the principal at the time of entering into the contract. Where the agent fails to perform its obligation toward the third party due to any reason attributable to the principal, the agent shall disclose the principal to the third party, allowing the third party to select in alternative either the principal or the agent as the other contract party against whom to make a claim, provided that the third party may not subsequently change its selection of the contract party. Where the principal exercises the rights of the agent against the third party, the third party may avail itself of any defense it has against the agent. Where the third party selects the principal as the other party to the contract, the principal may avail itself of any defense it has against the agent as well as any defense the agent has against the third party.

Article 404 Any property acquired by the agent in the course of handling the commissioned affair shall be turned over to the principal.

Article 405 Upon completion of the commissioned affair by the agent, the principal shall pay the remuneration thereto. Where the agency appointment contract is terminated or the commissioned affair is not capable of being completed due to any reason not attributable to the agent, the principal shall pay to the agent an appropriate amount of remuneration. If the parties agrees otherwise, such agreement shall prevail.

Article 406 Under a commission contract for value, if the principal sustains any loss due to the fault of the agent, the principal may claim damages. Under a gratuitous agency appointment contract, if the principal sustains any loss due to the agent's intentional misconduct or gross

negligence, the principal may claim damages. Where the agent acts beyond the scope of authorization, thereby causing loss to the principal, it shall pay damages.

Article 407 In the course of handling the commissioned affair, if the agent sustains any loss due to a reason not attributable to itself, the agent may seek indemnification from the principal.

Article 408 Subject to consent by the agent, the principal may, in addition to appointing the agent, also appoint a third party to handle the commissioned affair. If such appointment results in loss to the agent, it may seek indemnification from the principal.

Article 409 Where two or more agents jointly handle the commissioned affair, they are jointly and severally liable to the principal.

Article 410 Either the principal or the agent may terminate the agency appointment contract at any time. Where the other party sustains any loss due to termination of the contract, the terminating party shall indemnify the other party, unless such loss is due to a reason not attributable to the terminating party.

Article 411 A commission contract is discharged when either the principal or the agent is deceased or incapacitated or enters into bankruptcy, except where the parties agree otherwise, or where discharge is inappropriate in light of the nature of the commissioned affair.

Article 412 Where discharge of the commission contract due to the death, incapacitation or bankruptcy of the principal will harm the principal's interests, the agent shall continue to handle the commissioned affair before an heir, legal agent or liquidation team thereof takes over the commissioned affair.

Article 413 If the commission contract is discharged as a result of the death, incapacitation or bankruptcy of the agent, the heir, legal agent or liquidation team thereof shall timely notify the principal. Where discharge of the agency contract will harm the principal's interests, before the principal makes any care-taking arrangement, the heir, legal agent or liquidation team of the agent shall take the necessary measures.

Chapter 22 Contracts of Commission Agency

Article 414 A contract of commission agency is a contract whereby the commission agent conducts trading activities in its own name for the principal, and the principal pays the remuneration.

Article 415 The expenses incurred by the commission agent in the course of handling the commissioned affair shall be borne by the commission agent, except as otherwise agreed upon by the parties.

Article 416 Where the commission agent is in possession of the entrusted item, it shall keep the

entrusted item with due care.

Article 417 If an entrusted item is defective, perishable or susceptible to deterioration at the time it was delivered to the commission agent, upon consent by the principal, the commission agent may dispose of the item; where the trustee-trader is unable to contact the principal in time, it may dispose of the entrusted item in a reasonable manner.

Article 418 Where the commission agent is to sell the entrusted item below, or buy the entrusted item above, the price designated by the principal, it shall obtain consent from the principal. If such sale is effected without consent by the principal, and the commission agent makes up the deficiency on its own, it is binding on the principal. Where the commission agent sells the entrusted item above, or purchases the entrusted item below, the price designated by the principal, the remuneration may be increased in accordance with the contract. Where such matter is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the benefit belongs to the principal. Where the principal gives special pricing instruction, the commission agent may not make any sale or purchase in contravention thereof.

Article 419 Where the commission agent is to sell or purchase a commodity the price of which is fixed by the market, the commission agent may act as the purchaser or seller itself, unless the principal expresses otherwise. Where the commission agent is under the situation prescribed in the preceding paragraph, it may still require payment of remuneration from the principal.

Article 420 Once the commission agent purchases the entrusted item in accordance with the contract, the principal shall timely take delivery. Where after receiving demand from the commission agent, the principal refuses to take delivery without cause, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law. Where the entrusted item fails to be sold or the principal withdraws it from sale, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law if the principal fails to retrieve or dispose of it after receiving such demand from commission agent.

Article 421 Where the commission agent enters into a contract with a third party, it directly enjoys the rights and assumes the obligations thereunder. Where the third party fails to perform its obligations, thereby causing damage to the principal, the commission agent shall be liable for damages, except as otherwise agreed upon by the commission agent and the principal.

Article 422 Where the commission agent has completed the entrusted matter or has partially completed the entrusted matter, the principal shall pay the appropriate remuneration thereto. Where the principal fails to pay the remuneration within the prescribed period, the commission agent is entitled to lien on the entrusted item, except as otherwise agreed upon by the parties.

Article 423 Matters not prescribed in this Chapter shall be governed by the relevant provision on commission contracts.

Chapter 23 Intermediation contracts

Article 424 A intermediation contract is a contract whereby the broker presents to the client an opportunity for entering into a contract or provides the client with intermediary services in connection with the conclusion thereof, and the client pays the remuneration.

Article 425 The broker shall provide true information concerning matters relevant to the conclusion of the proposed contract. Where the broker intentionally conceals any material fact or provided false information in connection with the conclusion of the proposed contract, thereby harming the client's interests, it may not require payment of any remuneration and shall be liable for damages.

Article 426 Once the broker facilitates the formation of the proposed contract, the client shall pay the remuneration in accordance with the intermediation contract. Where remuneration to the broker is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be reasonably fixed in light of the amount of labor expended by the broker. Where the broker facilitates the formation of the proposed contract by providing intermediary services in connection therewith, the remuneration paid to the broker shall be equally borne by parties thereto. Where the broker facilitates the formation of the proposed contract, the brokerage expenses shall be borne by itself.

Article 427 Where the broker fails to facilitate the formation of the proposed contract, it may not require payment of remuneration, provided that it may require the client to reimburse the necessary brokerage expenses incurred. Supplementary Provisions

Article 428 This Law shall take effect as of October 1, 1999, and the Economic Contract Law of the People's Republic of China, the Foreign-related Economic Contract Law of the People's Republic of China, and the Technology Contract Law of the People's Republic of China shall be repealed simultaneously.

Real Right Law of the People's Republic of China



(Adopted at the 5th session of the Tenth National People's Congress on March 16, 2007)

Part I General Rules Chapter I Basic Principles

Article 1 In accordance with the Constitution Law, the present Law is enacted with a view to maintaining the basic economic system of the state, protecting the socialist market economic order, clearly defining the attribution of the res, bringing into play the utilities of the res and safeguarding the real right of the right holder.

Article 2 The civil relationships incurred from the attribution and utilization of the res shall be governed by the present Law. The term "res" as mentioned in the present Law means realties and chattels. Where it is prescribed in any provision that certain right shall be taken as an object of real right, such provision shall be applicable. The term "real right" as mentioned in the present Law means the exclusive right of direct control over a specific res enjoyed by the holder in accordance with law, including ownership, usufructuary right and real rights for security.

Article 3 In the primary phase of socialism, the state adheres to the basic economic system with the public ownership playing a dominant role and diverse forms of ownership developing side by side. The public economy shall be consolidated and developed by the state, and the development of the nonpublic economy shall be encouraged, supported and guided. The socialist market economy system shall be practiced by the state as well as the equal legal status and development rights of all market subjects shall be protected.

Article 4 The real right of the state, collective, individual or any other right holder shall be protected by law, and may not be damaged by any entity or individual.

Article 5 The varieties and contents of real rights shall be prescribed by law.

Article 6 The creation, alteration, alienation or termination of the real right of a realty shall be subject to registration in accordance with law. The creation or alienation of the real right of a chattel shall be delivered in accordance with law.

Article 7 One shall, when acquiring or exercising a real right, comply with the law, respect social morals and may not infringe upon the public interests or the lawful rights and interests of any other person.

Article 8 In case there exists any other special provision in respect of real right in any other law, such special provision shall prevail.

Chapter II Creation, Alteration, Alienation and Termination of Real Right

Section 1 Reality Registration

Article 9 Until it is registered in accordance with law, the creation, alteration, alienation or termination of the real right of a realty shall come into effect; unless it is otherwise prescribed by any law, it shall have no effect if it is not registered in accordance with law. As regards the ownership of the natural resources owned by the state in accordance with law, the registration is not required.

Article 10 The registration of a realty shall be handled by the registration organ at the locality of the realty. A uniform registration system over realties shall be practiced by the state. The scope, organ and measures of uniform registration shall be specified by the related laws and administrative regulations.

Article 11 In light of the different registration items, an applicant shall, when applying for the registration of a realty, provide the ownership certificate of the realty and such necessary materials as the location and area of the realty.

Article 12 A registration organ shall perform the duties as follows:

- (1) to examine the ownership certificate and other necessary materials as provided by the applicant;
- (2) to inquire the applicant about the registration items concerned;
- (3) to register the related items in accordance with the facts and in a timely manner; and
- (4) other duties as provided for in any law or administrative regulation. In case the related situation of the realty under application for registration needs further proving, the registration organ may request the applicant to provide supplementary materials and conduct on-the-spot inspection where necessary.

Article 13 No registration organ may commit any of the behaviors as follows:

- (1) to ask for an evaluation of a realty;
- (2) to repeatedly register registration in the name of annual inspection; or
- (3) other behaviors conducted beyond its scope of registration duties.

Article 14 As regards the creation, alteration, alienation or termination of the real right of a realty, it shall go into effect since the date when it is recorded in the realty register in case the registration thereof is required by law.

Article 15 As regards a contract entered into by the related parties concerned on the creation, alteration, alienation or termination of the real right of a realty, it shall go into effect upon the conclusion of the contract, unless it is otherwise prescribed by any law; and the validity of the contract is not affected, whether the real right has been registered or not.

Article 16 The realty register shall be the basis for deciding the ownership and contents of a realty and shall be under the management of the registration organ.

Article 17 The realty ownership certificate shall be the evidence for the holder's ownership of a realty. The items recorded in the realty ownership certificate shall accord with those recorded in

the realty register; unless it is proved that there is anything wrong in the realty register, the one recorded therein shall prevail in the case of any inconsistency.

Article 18 Any right holder or interested party may file an application for consulting or copying the registration materials, and the registration organ may not reject.

Article 19 In case any right holder or interested party holds that there is anything wrong in any item recorded in the realty register, it/he may apply for a correction of the registration. The registration organ shall revise the registration accordingly, in case the holder recorded in the realty register agrees to revise the registration in written form or there is evidence to prove that the registration is wrong. The interested party may apply for dissidence registration, in case the holder recorded in the realty register does not agree to the alteration. Where the registration organ grants the dissidence registration but the applicant fails to lodge an action within 15 days as of the date of dissidence registration, the dissidence registration shall lose its effect. In case the dissidence registration is improper and bring into damages to the right holder, the holder may require the applicant to compensate for damages.

Article 20 In case the related parties entered into a purchase agreement on a premise or the real right of any other realty, they may apply for advance notice registration to the registration organ so as to ensure the realization of the real right in the future. Without the consent of the holder in the advance notice registration, any disposal of the realty, after the advance notice registration, may not produce effect of real right. In case the obligee's right is terminated after the advance notice registration is made, or the application for the registration of the realty is not filed within 3 months as of the date when it can be registered, the advance notice registration shall lose its effect.

Article 21 In case any related party provides false materials for applying for registration and causes damages to any other person, it/he shall assume the liability for compensation. In case any registration organ causes damages to any other person by virtue of any mistake in registration, it shall assume the liability for compensation. The registration organ may, after making the compensation, recover the amount from the person who causes the registration mistake.

Article 22 Realty registration fees shall be charged on each piece, and may not be charged on the basis of the size, volume or certain proportion of the realty's value. The concrete charging rates shall be formulated by the related departments in the State Council in collaboration with the competent pricing department.

Section 2 Chattel Delivery

Article 23 Unless it is otherwise prescribed by any law, the creation or alienation of the real right of a chattel shall come into effect upon delivery.

Article 24 The creation, alteration, alienation or termination of the real right of any vessel, aircraft or motor vehicle and so on may not challenge any bona fide third party if it is not registered.

Article 25 In case the right holder has legally possessed the chattel prior to the establishment or alienation of a chattel's real right, the real right shall come into effect upon the effectiveness of the legal act.

Article 26 In case a third party has legally possessed the chattel prior to the establishment or alienation of a chattel's real right, the person assuming the obligation of delivery may, instead of delivery, alien the right to request the third party to return the original object.

Article 27 In case both parties agree to let the alienator continuously possess the chattel when the real right of a chattel is alienated, the real right shall go into effect upon the effectiveness of the agreement.

Section 3 Other Rules

Article 28 In case the creation, alteration, alienation or termination of a real right is resulted from a legal document of the people's court or arbitration committee or a requisition decision of the people's government, etc, the real right shall come into effect upon the effectiveness of the legal document or the requisition decision of the people's government.

Article 29 In case real right is acquired through inheritance or bequest, it shall go into effect as of the beginning time of the inheritance or bequest.

Article 30 In case a real right is created or terminated as a result of such factual behaviors as the legal construction or premise demolition, it shall come into effect upon the accomplishment of the factual behavior.

Article 31 As regards a real right of realty enjoyed according to the provisions of Articles 28 through 30 of the present Law, any disposal thereof may not produce effect of real right until it is registered as required by law.

Chapter III Protection of Real Right

Article 32 Where a real right is damaged, the right holder may settle the problem by means of conciliation, mediation or arbitration, etc.

Article 33 Where any dispute over the ownership or content of real right arises, the interested parties may require the confirmation of the right.

Article 34 Where a realty or chattel is under an unauthorized possession, the right holder may require the returning of the original object.

Article 35 In case a real right is under obstruction or may be obstructed, the right holder may require the removing of the impediment or the termination of the danger.

Article 36 In case a realty or chattel is damaged, the right holder may require the repairing, remaking, changing or the restoration of the original state.

Article 37 In case the infringement upon a real right causes losses to the right holder, the right holder may require the compensation for the losses or the assuming of any other civil liability.

Article 38 The ways for protecting real right as prescribed in the present Law may apply either independently or jointly in light of the specific situation of an injury of real right. In addition to assuming civil liabilities, any entity or individual infringing upon a real right shall assume the administrative liabilities where it/he violates any provision on administrative regulation; in case any crime is established, it/he shall assume the criminal liabilities.

II Ownership Chapter IV General Rules

Article 39 The owner of a realty or chattel is entitled to possess, utilize, seek profits from and dispose of the realty or chattel in accordance with law.

Article 40 The owner of a realty or chattel is entitled to establish a usufructuary right or real right for security over the realty or chattel. The holder of usufructuary right or the holder of real right for security may, when exercising the right, not injure the owner 's rights and interests.

Article 41 As regards a realty or chattel that is exclusively owned by the state as prescribed by law, its ownership may not be acquired by any entity or individual.

Article 42 In order to meet the demands of public interests, it is allowed to requisition lands owned collectively, premises owned by entities and individuals or other realties according to the statutory power limit and procedures. When requisitioning land owned collectively, it is required to, in accordance with law and in full amount, pay land compensation fees, placement subsidies, compensations for the above-ground fixtures of the lands and seedlings and other fees, arrange for social security fees for the farmers with land requisitioned, guarantee their livelihood and protect their lawful rights and interests. When requisitioning the premises owned by entities and individuals or other realties, it is required to compensate for demolition and relocation in accordance with law and protect the lawful rights and interests of the owners of the requisitioned realties; when requisitioning the individuals' residential houses, it is required to guarantee the housing conditions of the owners of the requisitioned houses. The compensation fees for requisition and other fees may not be embezzled, misappropriated, privately shared, detained or delayed in the payment of by any entity or individual.

Article 43 Special protections are provided by the state for farm lands, the conversion of farm lands into construction lands is strictly restricted and the aggregate quantity of construction lands is under control. No one may requisition any land owned collectively with violation of the statutory power limit and procedures.

Article 44 For meeting needs of emergent dangers or disasters, it is allowed for one to use the realties or chattels owned by entities and individuals according to the statutory power limit and procedures. Such realties or chattels shall, after the emergent use, be returned to the owners. In case any realty or chattel owned by any entity or individual is used or damaged or lost after being used, corresponding compensation shall be made.

Chapter V State Ownership, Collective Ownership and Private Ownership

Article 45 As regards the properties that shall be owned by the state as provided for by law, they shall be in the ownership of the state, that is, owned by all the people. The State Council shall exercise the ownership of state-owned properties on behalf of the state; in case there is any otherwise provision in any law, such provision shall prevail.

Article 46 Mineral deposits, waters and sea areas shall be in the ownership of the state.

Article 47 Urban lands shall be in the ownership of the state. As regards lands in the rural areas and suburban areas that shall be owned by the state as prescribed by law, they shall be in the ownership of the state.

Article 48 Such natural resources as forests, mountains, grasslands, waste lands and tidal flats shall be in the ownership of the state, except for those that shall be in the ownership of collective as provided for by law.

Article 49 As regards the wildlife resources that shall be owned by the state as provisioned by law, they shall be in the ownership of the state.

Article 50 Radio frequency spectrum resources shall be in the ownership of the state.

Article 51 As regards the cultural relics that shall be owned by the state as provisioned by law, they shall be in the ownership of the state.

Article 52 National defense assets shall be in the ownership of the state. As regards such infrastructures as railways, highways, electric power facilities, telecommunication facilities, and petrol and gas pipelines that shall be owned by the state as provisioned by law, they shall be in the ownership of the state.

Article 53 State organs have the power, in accordance with the laws and the relevant provisions of the State Council, to possess, utilize and dispose of any realty or chattel directly controlled by them.

Article 54 The public institutions held by the state have the power to possess, utilize, as well as, according to the laws and the relevant provisions of the State Council, seek profits from and dispose of any realty or chattel directly controlled by them.

Article 55 As regards the enterprises set up with the funds invested in by the state, the State Council and the local people's governments shall perform and enjoy the contributor's duties as well as rights and interests on behalf of the state in accordance with the relevant laws and administrative regulations.

Article 56 The state-owned properties shall be protected by law, and no entity or individual may encroach, plunder, privately distribute, hold back or damage them.

Article 57 The institutions and working personnel thereof in charge of performing the duties of managing and supervising state-owned assets shall, according to law, strengthen the management and supervision of state-owned assets so as to promote the value maintenance and appreciation prevent the losses thereof; in case any entity or individual causes any loss of state-owned assets by misusing authority or neglecting duty, it/he shall assume legal liabilities in accordance with law. In case any entity or individual, in the process of enterprise restructuring, merger, division or affiliated transactions, causes losses of state-owned assets by way of transferring at a low price, conspiring to distribute them secretly, providing guarantee with them without authorization or any other way with violation of the provisions on the management of state-owned assets, it/he shall assume legal liabilities in accordance with law.

Article 58 The collectively-owned realties and chattels shall contain:

- (1) Lands, forests, mountains, grasslands, wastelands and tidal flats that shall be in the ownership of collective as provided for by law;
- (2) Buildings, production facilities, farmland, and water conservancy facilities that are in the ownership of collective;
- (3) Facilities for education, science, culture, sanitation and sports, etc that are in the ownership of collective;
- (4) Other realties and chattels that are in the ownership of collective.

Article 59 The realties and chattels that are in the ownership of a farmers' collective shall be collectively owned by all the members of this collective. The following issues shall be determined by the members of the collective according to the statutory procedures:

- (1) land contracting plan and whether to contract out a land to an entity or individual not included in the collective;
- (2) adjustment of the contracted lands among the right holders of the contracted management of land;
- (3) methods for using and distributing such fees as land compensation fees;
- (4) the alteration of ownership or any other related issue of an enterprise set up with the funds invested in by the collective; and
- (5) other issues provided for by any law.

Article 60 As regards any collectively-owned land, forest, mountain, grassland, wasteland or tidal flat, the ownership thereof shall be exercised according to the provisions as follows:

- (1) In case it is owned by a farmers' collective of a village, a collective economic organization or the villagers' committee of the village shall exercise the ownership on behalf of the collective;

(2) In case it is owned by two farmers' collectives or more, all the collective economic organizations or villagers' groups of the village shall exercise the ownership on behalf of the collective; and

(3) In case it is owned by a farmers' collective of a town, a collective economic organization of the town shall exercise the ownership on behalf of the collective.

Article 61 As regards any realty or chattel owned by an urban collective, this urban collective has the rights to possess, use, seek profits from and dispose of it according to the related laws and administrative regulations.

Article 62 The collective economic organization, villager's committee or villagers' group shall, in accordance with the relevant laws, administrative regulations, articles of association and village regulations and villagers' pledges, publicize the situation of the properties owned by a collective to the members of the collective.

Article 63 Collectively-owned properties shall be protected by law, and any entity or individual may not encroach, plunder, privately distribute, hold back or destroy them. Where the legitimate rights and interests of any member of the collective are infringed upon by any decision made by a collective economic organization, villagers' committee or the principle thereof, such member may require the people's court to cancel the decision.

Article 64 An individual has the right to own his legal income, premise, household goods, production instruments, raw materials as well as other realties and chattels.

Article 65 The legal savings, investments and the proceeds therefrom of an individual shall be protected by law. An individual's right of inheritance as well as other legal rights and interests shall be protected by the state in accordance with law.

Article 66 An individual's legal properties shall be protected by law, any entity or individual may not encroach, plunder or destroy them.

Article 67 The state, any collective or individual may invest to set up a limited liability company, a company limited by shares or any other form of enterprise. In case the state, a collective or an individual invest the realties or chattels it owns in an enterprise, the contributor shall, in accordance with the agreement or on the basis of his proportion of investment, enjoy rights such as obtaining asset returns, making important decisions and selecting operators and managers and perform their duties.

Article 68 In accordance with the laws, administrative regulations and its articles of association, An enterprise legal person is entitled to possess, utilize, seek profits from and dispose of any realty or chattel it owns. As regards the rights over the realties and chattels owned by a legal person other than an enterprise legal person, the provisions of the related laws, administrative regulations and its articles of associations shall apply.

Article 69 The realties and chattels owned by social organizations in accordance with law shall be protected by law.

Chapter VI Owners' Partitioned Ownership of Building Areas

Article 70 As regards such exclusive parts within the buildings as the residential houses or the houses used for business purposes, an owner shall enjoy the ownership thereof, while as regards the common parts other than the exclusive parts, the owner shall have common ownership and the common management right thereof.

Article 71 An owner is entitled to possess utilize, seek profits from and dispose of the exclusive parts of the building. Any owner may not endanger the safety of the building or infringe upon the lawful rights and interests of any other owner when exercising his or its rights.

Article 72 An owner enjoys the rights and assumes the obligations over the common parts other than the exclusive parts of the building, and may not reject performing the obligations under the pretext of abandoning rights. In case an owner alienates his residential house or the house used for business purposes within the building, the common ownership and the common management right enjoyed by him/her over the common parts shall be alienated at the same time.

Article 73 The roads within the building zone, except for the public roads of cities and towns, shall be commonly owned by the owners. The green lands within the building area, except for the public green lands of cities and towns or those which are definitely ascribed to individuals, shall be commonly owned by all the owners. The other public places, common facilities and houses used for realty services within the building zone shall be commonly owned by all the owners.

Article 74 The parking places and garages within the building area planned for parking cars shall be used to meet the needs of the owners above all else. The ownership of the parking places and garages shall be agreed upon by the related parties in the manners of selling, complementary using or leasing, etc. The parking places, which occupy the roads or other fields commonly owned by all owners, shall be in the common ownership of all the owners.

Article 75 The owners may set up an owners' assembly and vote for an owners' committee. For the establishment of the owners' assembly and the vote of the owners' committee, the related departments under the local people's governments shall provide guidance and assistance.

Article 76 The following matters shall be commonly determined by all owners:

- (1) to formulate and revise the rules of procedure for the owners' assembly;
- (2) to formulate and revise the stipulations on managing the building and affiliated facilities thereof;
- (3) to vote for the owners' committee or alter the members thereof t;
- (4) to hire or fire the realty service enterprise or any other manager;
- (5) to raise or use the funds for maintaining the building and affiliated facilities thereof;
- (6) to rebuild the building or any of its affiliated facilities;

(7) other important matters on the common ownership and the common management right. For making a decision on matters prescribed in Item (5) or (6) of the preceding paragraph, the consent of the 2/3 or more of the total owners with exclusive parts accounting for 2/3 or more of the total area of the building shall be obtained. For making a decision on any other issue prescribed in the preceding paragraph, the consent of half of the total owners with exclusive parts accounting for half of the total area of the building shall be obtained.

Article 77 Any owner may not alter a residential house into a house used for business purposes with violation of any law, regulation or management stipulation. An owner shall, when changing a residential house into a house used for business purposes, obtain the consent of the interested owners, in addition to complying with the laws, regulations and management stipulations.

Article 78 Decisions made by the owners' assembly or the owners' committee are binding to each owner. In case the legitimate rights and interests of any owner has been injured by any decision made by the owners' assembly or the owners' committee, the injured owner may require the people's court to cancel the decision.

Article 79 The funds for maintaining a building and affiliated facilities thereof shall be commonly owned by the owners of the building. The funds may, upon the codetermination of the owners, be used for maintaining such common parts as elevators and water tanks. The circumstance about the raise and use of the maintenance funds shall be released to the owners.

Article 80 As regards such matters as the expenses allocation and the proceeds distribution of a building or any of its affiliated facilities, in case there exists any stipulation for these, such stipulation shall apply; in the case of no stipulation or unclear stipulation, these matters shall be determined in accordance with the proportion of each owner's exclusive parts to the total area of the building.

Article 81 The owners of a building may manage the building and affiliated facilities thereof by themselves or they may entrust a realty service enterprise or any other manager to conduct the management. As regards the realty service enterprise or any other manager hired by the construction entity, the owners are entitled to alter it in accordance with law.

Article 82 The realty service enterprise or any other manager shall, upon the strength of the owners' entrustment, manage the building and affiliated facilities thereof within the building area and accept the owners' supervision.

Article 83 The owners shall comply with the laws, regulations and management stipulations. As regards any act infringing upon the lawful rights and interests of other persons, such as discarding wastes at will, discharging atmospheric pollutants and noise, breeding animals with violation of the related regulations, illegally building shelters, occupying passages or rejecting paying realty management fees, etc, the owners' assembly and the owners' committee have the right, in accordance with the relevant laws, regulations and management stipulations, to request the actor to stop the infringing act, terminate the danger, remove the impediments and make compensation

for the losses. Where any owner's legitimate rights and interests are infringed upon, he/she may lodge an action to the people's court in accordance with law.

Chapter VII Neighboring Relationship

Article 84 A neighboring right holder of a realty shall, in accordance with the principles of facilitating production and livelihood, solidarity and mutual aid, as well as fairness and equity, handle the neighboring relationship in a correct manner.

Article 85 In case there exists any legal provision on the disposal of neighboring relationship, such provision shall apply; in the case of no such provision,, the neighboring relationship shall be disposed of in light of the local customs.

Article 86 The holder of a realty shall provide necessary convenience for the neighboring right holders in terms of the use of water and drainage. As regards the utilization of natural running water, the neighboring right holders of a realty shall rationally distribute it. The natural current direction shall be respected when draining natural running water.

Article 87 Necessary conveniences shall be provided by the right holder of a realty where a neighboring right holder has to use his land by virtue of passage or for any other reason.

Article 88 In case the right holder of a realty has to use a neighboring land or building by virtue of the construction or repairing of a building, or the laying of wires, cables, water pipes, heating pipelines or fuel gas pipelines, etc, necessary convenience shall be provided by the right holder of such land or building.

Article 89 When constructing a building, no entity or individual may block the ventilation, lighting or sunshine of any neighboring building with violation of the relevant engineering construction standards of the state.

Article 90 No holder of realty may discard solid wastes or discharge such harmful substances as atmospheric pollutants, water pollutants, noise, light and magnetic radiation with violation of the related provisions of the state.

Article 91 The right holder of the realty may not, when excavating a land, constructing a building, laying a pipeline or installing an equipment, endanger the safety of any neighboring realty.

Article 92 Where the right holder of a realty has to use a neighboring realty by virtue of using water, drainage, passage or laying pipelines, etc, he shall make more efforts to avoid causing any damage to the right holder of the neighboring realty; He shall make corresponding compensations in case any damage is caused.

Chapter VIII Common Ownership

Article 93 A realty or chattel may be commonly owned by two or more entities or individuals. Common ownership contains several co-ownership and joint ownership.

Article 94 As regards a commonly owned realty or chattel, a several co-owner shall, on the basis of his proportion, enjoy the ownership of the realty or chattel.

Article 95 As regards a commonly owned realty or chattel, a joint owner shall, on a common basis, enjoy the ownership of the realty or chattel.

Article 96 The co-owners shall manage the commonly owned realty or chattel in accordance with stipulation; in the case of no or unclear stipulation,, all co-owners have the right and obligation of management.

Article 97 As regards the disposal or heavy repair of a commonly owned realty or chattel, unless it is stipulated otherwise by the co-owners, the consent of the several co-owners holding 2/3 shares or all joint owners shall be obtained.

Article 98 As regards the management expenses or any other liabilities of a commonly owned res, in case there exists any stipulation on these, such stipulation shall apply; in the case of no or unclear stipulation, the expenses shall be assumed by the several co-owners in accordance with their respective shares or commonly assumed by all joint owners.

Article 99 Where the co-owners of a commonly owned realty or chattel has stipulated that it is not allowed to partition the realty or chattel so as to maintain the relationship of common ownership, such stipulation shall apply; but where any co-owner has certain significant reasons for partitioning the realty or chattel, he may request the partition; in the case of no or unclear stipulation, a several co-owner may request the partition at any time, and a joint owner may request the partition where the basis for the common ownership disappears or he has certain significant reasons. In case any damage is caused by the partition causes to any other person, the corresponding compensation shall be made.

Article 100 The co-owners of a commonly owned realty or chattel may decide on through negotiation the way of partition. The real object shall be partitioned in case no agreement is achieved and the realty or chattel may be partitioned without impacting its value,;, the partition shall be executed by distributing the purchase price obtained from converting its value into money, the auction or selling off the realty or chattel in case it is difficult to partition it or its value would be affected because of the partition. Where the realty or chattel, which is obtained from the partition of a commonly owned realty or chattel by a co-owner, has any flaw, the other co-owners shall assume the losses together.

Article 101 A several co-owner may alienate his share of the commonly owned realty or chattel. And the other several co-owners have the preemptive right for purchase on an equal footing.

Article 102 As regards an obligee's right or a debt generated from a commonly owned realty or chattel, unless it is otherwise prescribed by any law or the third party is aware of the fact that the co-owner does not have the relationship of joint and several creditor's right or debt, a co-owner shall enjoy joint and several creditor's right or undertake joint and several debt in terms of external relationship. In terms of the internal relationship among the co-owners, unless it is otherwise stipulated by the co-owners, a co-owner shall enjoy the creditor's right or undertake the debt on the basis of his own share, while joint owners shall enjoy the creditor's right or undertake the debt on a common basis. In case any several co-owner overpays his share of the debt, he/she has the right to recover the overpaid amount from the other co-owners.

Article 103 In case the co-owners does not stipulate whether the commonly owned realty or chattel is under several co-ownership or joint ownership, or if the stipulation is unclear, unless there is a family relationship among the co-owners, it shall be considered as a several co-ownership.

Article 104 A several co-owner's share of a commonly owned realty or chattel shall be decided on according to his contribution amount in the case of no or unclear stipulation; each several co-owner shall enjoy an equal share where it is impossible to determine the contribution amount.

Article 105 In case two or more entities or individuals commonly own the usufructuary right or real right for security of a realty or chattel, the provisions in this Chapter shall be applicable by reference.

Chapter IX Special Provisions on Acquiring Ownership

Article 106 In case a person unauthorized to dispose a realty or chattel alienates the realty or chattel to an assignee, the owner is entitled to recover the realty or chattel. The assignee shall obtain the ownership of the realty or chattel if meeting all of the following conditions, unless it is otherwise prescribed by law:

- (1) to accept the realty or chattel in good faith;
- (2) to purchase the realty or chattel at a reasonable price; and
- (3) in case registration is required by law, the alienated realty or chattel shall have been registered, while in case registration is not required, the delivery thereof shall have been accomplished. In case, according to the preceding paragraph, an assignee obtains the ownership of a realty or chattel, the original owner may require the person unauthorized to dispose of the realty or chattel to compensate for his losses. In case a related party obtains any other form of real right in good faith, the preceding two paragraphs shall apply by reference.

Article 107 The owner or any other holder has the right to recover a lost property. In case the lost property is possessed by any other person through alienation, the owner has the right to require the person unauthorized to dispose of the property to compensate for damages, or, ask the assignee to return the original property within 2 years as of the date when he knows who is the assignee. But in case the assignee purchases the lost property through auction or from a qualified operator, the holder shall, when requiring the returning of the original property, pay the assignee the amount

that the assignee has paid for purchasing the property. After paying the amount, the owner has the right to recover the amount from the person unauthorized to dispose of the property.

Article 108 After a bona fide assignee obtains a realty, the original rights on the realty shall be terminated, unless the bona fide assignee has already been or ought to be aware of the right when the transfer is made.

Article 109 A lost-and-found object shall be returned to the right holder. The person finding such object shall inform the right holder to claim the object or hand it over to such related departments as the public security department in time.

Article 110 After receiving a lost-and-found object, the related department shall notify the right holder to claim the object in a timely manner in case it knows who is the right holder; it shall publish an announcement on the claiming of the lost property in a timely manner in case it does not know.

Article 111 The person who finds the object shall properly keep it before it is handed over to the related department, and the related department also shall do so before it is claimed by the right holder. Where the object is injured or lost deliberately or for gross negligence, the personnel concerned shall assume the civil liabilities.

Article 112 The right holder of the object, when obtaining a lost-and-found object, shall pay the person who finds the object or the related department such necessary expenses as the cost for safekeeping the object. Where a right holder promises to offering a reward for finding the object, he shall, when claiming the object, perform the obligation of granting the reward. Where the person who finds the object misappropriates the lost object, he/she shall be deprived of the right to ask for paying the expenses he/she has paid for safekeeping the object or require the holder to perform the obligation as promised.

Article 113 In case a lost-and-found object fails to be claimed within 6 months as of the date when the claiming announcement is published, it shall be owned by the state.

Article 114 As regards the finding of a drifter or the discovery of an object buried underground or a hidden property, the relevant provisions on the finding of a lost-and-found property shall apply by analogy. Where there is any other provision in such laws as the law concerning the protection of cultural relics, such provisions shall prevail.

Article 115 Unless it is otherwise stipulated by the parties concerned, the accessory res shall be alienated together with the alienation of the principal res.

Article 116 Natural fruits shall be enjoyed by the owner; it shall be obtained by the holder of usufructuary right where there are both owner and holder of usufructuary right. In case there are otherwise stipulations between by the parties concerned, such stipulation shall apply. Statutory

fruits shall be obtained by the parties concerned in accordance with stipulations if any; in the case of no or unclear stipulations, it shall be obtained in light of the practices of trading.

Part III Usufructuary Right Chapter X General Rules

Article 117 As regards the realty or chattel owned by someone else, a usufructuary right holder is entitled to possess, use and seek proceeds from it in accordance with law.

Article 118 As regards the natural resources that are owned by the state or that are owned by the state but used by the collective as well as those that are owned by the collective as prescribed by law, an entity or individual may possess, use and seek proceeds from them.

Article 119 Unless it is otherwise prescribed by any law, the state practices the system of paid use of natural resources.

Article 120 When exercising right, a usufructuary right holder shall comply with the provisions on protecting, reasonably exploring and utilizing resources as provided for in the laws. When the usufructuary right holder exercises rights, the owner may not intervene in.

Article 121 Where the usufructuary right is terminated or its exercise is affected for reasons of expropriation or requisition, the usufructuary right holder has the right to obtain corresponding compensations in accordance with Articles 42 and 44 of the present Law.

Article 122 The lawfully obtained right to use sea areas shall be under the protection of law.

Article 123 The mineral prospecting right, the mining right, the water intake right and the right to use water areas or tidal flats for breeding or fishery shall be under the protection of law.

Chapter XI Right to the Contracted Management of Land

Article 124 Such a dual operation system, under which centralized operation and decentralized operation are combined on the basis of household contracted management, shall be practiced by any rural economic organization. As regards the cultivated land, wood land, grassland, and other land for agricultural uses that are owned by farmers' collectives as well as those that are owned by the state and used by farmers' collectives, the system of land contracted management shall be adopted.

Article 125 The holder of the right to the contracted management of land has the right to possess, utilize and seek proceeds from the cultivated land, wood land and grassland, etc. under the contracted management thereof, and is entitled to such agricultural production activities as the planting, forestry, stockbreeding, etc.

Article 126 The contractual term of cultivated land shall be 30 years. The contractual term of grassland shall be 30 up to 50 years. The contractual term of wood land shall be 30 up to 70 years.

The contractual term of special forest land may, upon approval of the forestry administrative department under the State Council, be extended. After the contractual term as referred to in the preceding paragraph expires, the holder of the right to the contracted management of land may, according to the relevant provisions of the state, contract continuously.

Article 127 The right to the contracted management of land shall be established since the contract thereon goes into effect. The local people's government at the country level or above shall issue a certificate of the right to the contracted management of land, a forestry right certificate or a grassland-use right certificate to the holder, register it in the brochure so as to confirm such rights.

Article 128 The holder of the right to the contracted management of land has the right, in accordance with the provisions in the law on the contracting of rural land, to circulate his/her such right. The circulated term may not be more than the remnant term of the original contract. Any contracted land may not be used for non-agricultural constructions without approval.

Article 129 In case the right to the contracted management of land is circulated by means of exchange or transfer, where the parties concerned require for the registration of such circulation, an application for the alteration registration thereof shall be filed to the local people's government at the county level or above. Without such registration, neither party may challenge any third party with good faith.

Article 130 The contract-letting party may not readjust the contracted land within the duration of a contract. In case it is necessary to readjust the cultivated land or grassland as contracted by virtue of such especial events as natural calamities that have materially injured the contracted land, a readjustment may, in accordance with the legal provisions in the law on the contracting of rural land and other related laws, be carried out.

Article 131 The contract-letting party may not take back the contracted land within the term of the contract. In case there exists any otherwise provision in the law on the contracting of rural land or any other law, such provision shall prevail.

Article 132 In case a contracted land is expropriated, the holder of the right to the contracted management of such land has the right to obtain corresponding compensations in accordance with Paragraph 2 of Article 42 in the present Law.

Article 133 As regards the barren land or other rural land that is contracted through bid invitation, auction, or open negotiation, etc, the right to the contracted management thereof may, according to the law on the contracting of rural land and other laws as well the related regulations of the State Council, be circulated by means of alienation, lease, equity contribution, or mortgage, etc.

Article 134 In case the contracted management is conducted over any state-owned rural land, the related provisions in the present Law shall apply by analogy.

Chapter XII Right to Use Construction Land

Article 135 The holder of the right to use construction land has the right to possess, use and seek proceeds from the land owned by the state, and shall be entitled to the construction of buildings, fixtures and their auxiliary facilities by making use of such land.

Article 136 The right to use construction land may be created separately on the surface of or above or under the land. The newly-established one may not injure the usufructuary right that has already been established.

Article 137 The right to use construction land may be created through transfer or allotment, etc. As regards the land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. as well as the land with two or more intended users, the alienation thereof shall adopt such means as auction, bid invitation or any other public bidding method. It is severely restrained to create the right to use construction land through allotment. For adopting such means, the provisions on land uses in the laws and administrative regulations shall be observed.

Article 138 In case the right to use construction land is created through auction, bid invitation, or agreement, etc., the related parties shall conclude a written contract on the transfer of such right. In general, a contract on transfer of the right to use construction land shall contain the items as follows:

- (1) name and domicile of the parties concerned;
- (2) location and acreage, etc. of the land;
- (3) space to be covered by buildings, fixtures and affiliated facilities thereof;
- (4) use purposes;
- (5) use term;
- (6) payment methods for allotment fees and other fees; and
- (7) dispute settlement method.

Article 139 For establishing the right to use construction land, an application for registering such right shall be submitted to the registration organ. The right to use construction land shall be established as of the accomplishment of such registration. A certificate on the right to use construction land shall be issued by the registration organ to the holder of the right to use construction land.

Article 140 The holder of the right to use construction land shall reasonably use the land and may not alter the use purpose. In case the purpose of land use needs to be altered, the approval of the relevant administrative department shall be obtained.

Article 141 The holder of the right to use construction land shall, according to the legal provisions and the contract, pay transfer fees and other fees.

Article 142 As regards the buildings, fixtures and their affiliated facilities built by the holder of the right to use construction land, the holder shall enjoy the ownership thereof, unless it is otherwise proved by any contrary evidence.

Article 143 Unless it is otherwise prescribed by any law, the holder of the right to use construction land has the right to alienate, exchange, use as equity contributions, endow or mortgage the right to use construction land.

Article 144 For alienating, exchanging, using as equity contribution, endowing, or mortgaging the right to use construction land, the parties shall enter into a corresponding written contract. The parties concerned may make stipulations on the contractual term, but which may not exceed the remnant term as stipulated in the contract on transfer of the right to use construction land.

Article 145 For alienating, exchanging, using as equity contribution, endowing, or mortgaging the right to use construction land, an application for alteration registration shall be submitted to the registration organ.

Article 146 When alienating, exchanging, using as equity contribution, endowing, or mortgaging the right to use construction land, the buildings, fixtures and affiliated facilities thereof on such land shall be disposed of at the same time.

Article 147 When alienating, exchanging, using as equity contribution, endowing, or mortgaging the buildings, fixtures and affiliated facilities thereof, the right to use construction land covered by the aforesaid buildings, fixtures and affiliated facilities thereof shall be disposed of at the same time.

Article 148 Before the term of the right to use construction land expires, where it is necessary to take back the land in advance by virtue of public interests, compensations shall, according to Article 42 of this Law, be given to the houses and other realties on such land, and corresponding land transfer fees shall be returned back.

Article 149 When the term of the right to use construction land for dwelling houses expires, it shall be renewed automatically. As regards the term of the right to use construction land not for dwelling houses, the renewing shall be subject to legal provisions. In case there exists any stipulation on the ownership of houses and other realties on the aforesaid land, such stipulation shall prevail; in the case of no or unclear such stipulation, the ownership shall be determined in accordance with the provisions in the laws and administrative regulations.

Article 150 Where the right to use construction land is terminated, the transferor shall go through deregistration formalities in time, and the certificate on the right to use construction land shall be taken back by the registration organ.

Article 151 Where a piece of collectively-owned land is used as construction land, it shall be handled in accordance with the law on land administration and other related laws.

Chapter XIII Right to Use House Sites

Article 152 The holder of the right to use house sites has the right to possess and use land owned by a collective, and to construct residential houses and affiliated facilities thereof by utilizing such land.

Article 153 For acquiring, exercising and alienating the right to use house sites, the law on land administration, other related laws and the related provisions of the state shall apply.

Article 154 The right to use house site shall be terminated where a house site is terminated by virtue of any natural disaster, etc.. A villager losing a house site shall be allotted a house site again.

Article 155 The alteration or cancellation registration shall be made in time in the case of the alienation or termination of a registered right to use house sites.

Chapter XIV Easement

Article 156 An easement holder shall, according to the contract, be entitled to utilize the realty of someone else so as to enhance the efficiency of his own realty. The term "realty of someone else" as referred to in the preceding Paragraph shall be the servient tenement, and "one's own realty" shall be the dominant tenement.

Article 157 For establishing an easement, the parties concerned shall enter into an written easement contract. In general, an easement contract shall contain the items as follows:

- (1) name and domicile of the related parties;
- (2) locations of servient tenement and dominant tenement;
- (3) purposes of use and methods;
- (4) use term;
- (5) fees and payment method; and
- (6) dispute settlement method.

Article 158 The easement shall be established since the easement contract comes into effect. Where the related parties considers that the registration thereof is necessary, they may apply to the registration organ for easement registration; otherwise, they may not challenge any third party with good faith.

Article 159 The holder of servient tenement shall allow an easement holder to use his/its land in accordance with the contract, and may not hamper the latter from exercising the right.

Article 160 An easement holder shall, according to the purposes and methods as stipulated in the contract, use the servient tenement, and make efforts to reduce the real right restrictions on the holder of the servient tenement.

Article 161 The easement term shall be stipulated by the related parties, however, it can not be longer than the remnant term of such usufructuary rights as the right to the contracted management of land, the right to use construction land, etc.

Article 162 As regards the easement enjoyed or assumed by the owner of the land, where the right to the contracted management of land or the right to use house site is created, holders of such rights the right to the contracted management of land or rights may continuously enjoy or assume such established easement.

Article 163 Where any such usufructuary right as the right to the contracted management of land, the right to use house site, etc on the land has already been established, the land owner may, without consent of the aforesaid usufructuary right holder, not establish any easement.

Article 164 The easement may not be transferred alone. Unless it is otherwise stipulated by the contract, where any such usufructuary right as the right to the contracted management of land, the right to use construction land, the right to use house site, etc is alienated, the easement shall be alienated at the same time.

Article 165 The easement may not be mortgaged alone. Where the right to the contracted management of land or the right to use construction land, etc. is mortgaged, when such mortgage is realized, the easement shall be alienated simultaneously.

Article 166 When the dominant tenement as well as the right to the contracted management of land, the right to use construction land or the right to use house site thereon are partially alienated, the transferee shall enjoy the easement simultaneously in case the easement is involved in the alienated part,.

Article 167 When the servient tenement as well as the right to the contracted management of land, the right to use construction land thereon are partially alienated, the easement shall be binding on the alienatee if the easement is involved in alienated part.

Article 168 The holder of the servient tenement has the right to rescind the easement contract in case an easement holder is under any of the following circumstances, and the easement shall be terminated:

- (1) to go against the legal provisions or the contract, or misuse the easement; or
- (2) as regards the paid use of servient tenement, upon expiration of the stipulated time limit for payment, fails to pay fees within a reasonable period for two times after being urged to do so.

Article 169 For changing, alienating or eliminating the registered easement, the alteration or cancellation registration shall be go through in a timely manner.

Part IV Real Rights for Security Chapter XV General Rules

Article 170 Where the obligor fails to pay its due debts or any circumstance for realizing real rights for security as stipulated by the parties concerned happens, the holder of real rights for security shall enjoy preferred payments from the property for security, except that it is otherwise provided for by any law.

Article 171 According to the present Law or any other law, an obligee may, in such civil activities as loans or sales, establish the real rights for security in case the security is required for ensuring the realization of its/his credits. Where a third party provides security to the obligee for an obligor, countersecurity from the obligor may be required. The countersecurity shall be pursuant to the present Law and other related laws.

Article 172 For establishing real rights for security, a security contract shall be entered into in accordance with the present Law and the other related laws. A security contract shall be a subordinate one to the principal contract. Unless it is otherwise prescribed by any law, the security contract shall be invalid when the principal contract is nullified. After a security contract is confirmed to be nullified, the obligor, the security provider and the obligee that has faults shall, in light of their respective faults, undertake corresponding civil liabilities.

Article 173 The security range shall cover principal obligee's rights and their interests, default fines, damages as well as expenses for keeping the property for security and for realizing the real rights for security. In case there are otherwise stipulations between the related parties, such stipulations shall prevail.

Article 174 In case, during the security term, the property for security is damaged, lost or expropriated, the security holder may seek preferred payments from the insurance money, damages or indemnities, etc. incurred therefrom. If the term for performing the obligee's rights as secured has not expired, such insurance money, damages or indemnities, etc. may be submitted to a competent authority for keeping.

Article 175 As regards any security provided by a third party, where the obligee, without obtaining the written consent of the third party, allows the obligor to transfer all or part of its obligations, the security provider does not have to undertake corresponding security liabilities any more.

Article 176 As regards a secured credit involving both physical and personal security, where the obligor fails to pay its due debts or any circumstance as stipulated by the parties concerned for realizing the property for security happens, the obligee shall realize the obligee's rights as stipulated; in the case of no or unclear such stipulation, and where the obligor provides his/its own property for the security, the obligee's rights shall be realized firstly by the security in property; and if the security by property is provided by a third party, the obligee may, by the physical security or through requiring the guarantor to assume the guaranty liability, realize the obligee's rights. The third party has the right, after undertaking the security liability, to recover payments from the obligor.

Article 177 Real rights for security may be terminated under any of the following circumstances:

- (1) The principal obligee's rights are terminated;
- (2) The real rights for security have been realized;
- (3) The obligee waives the real rights for security; or
- (4) Any other circumstance under which the real rights for security will be terminated as provided for by any law.

Article 178 Where any provision in the Security Law conflicts with that of the present Law, the latter shall prevail.

Chapter XVI Mortgage Right

Section 1 General Mortgage Right

Article 179 In order to ensure the payment of debts, an obligor or a third party mortgages his/its properties to the obligee without transferring the possession of such properties, and when the obligor fails to pay due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right happens, the obligee has the right to seek preferred payments from such properties. The "obligor" or "third party" as referred to in the preceding paragraph shall be the mortgagor, the "obligee" shall be the mortgagee, while the "properties for security" shall be the mortgaged properties.

Article 180 As regards the following properties that the obligor or the third party has the right to dispose of, mortgage may be established thereon :

- (1) buildings and other objects fixed to land;
- (2) the right to use construction land;
- (3) the right to contracted management of such land as barren land, etc. that is acquired through bid invitation, auction and public consultation, etc.;
- (4) manufacturing facilities, raw materials, semi-manufactured goods and finished products;
- (5) buildings, vessels and aircraft under construction;
- (6) means of communications and transportation; and
- (7) other properties not prohibited from being mortgaged by any law or administrative regulation.

All the properties listed in the previous paragraph may be mortgaged together by a mortgagor.

Article 181 An enterprise, individual industrial and commercial household or agricultural production operator may, upon the written agreement between the parties concerned, mortgage the existing manufacturing facilities, raw materials, semi-manufactured goods and finished products or those to be owned in future, and when the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the right to mortgage arises, the obligee has the right to seek preferred payments from the chattels existing at the time of the realization of the right to mortgage.

Article 182 For mortgaging building, the right to use construction land within the area of this building shall be mortgaged together. When mortgaging the right to use construction land, all the buildings on such land shall be mortgaged together. Where a mortgagor fails to mortgage the

properties in accordance with the provisions in the preceding paragraph, the properties not mortgaged shall be treated as having been mortgaged together.

Article 183 As regards the right to use construction land of a township or village enterprise, mortgages may not be alone established thereon. Where the plant of a township and village enterprise is mortgaged, the right to use construction land within the area of such plant shall be mortgaged together.

Article 184 Any of the following properties may not be mortgaged:

- (1) ownership of land;
- (2) the right to use such collectively-owned land as cultivated land, house sites, land and hilly land allotted for private use, etc, except for those mortgagable as prescribed by any law;
- (3) educational, medical, healthy and other public welfare facilities of such institutions and social groups with the aim of benefiting the public as schools, kindergartens, hospitals, etc;
- (4) properties with unclear or controversial ownership or use rights;
- (5) properties legally confiscated, seized or controlled; or
- (6) other properties that cannot be mortgaged as prescribed by any law or administrative regulation.

Article 185 For establishing a mortgage right, the parties concerned shall enter into a written mortgage contract. In general, a mortgage contract shall contain the items as follows:

- (1) the variety and sum of the secured obligee's rights;
- (2) the time limit to pay debts by the obligor;
- (3) the name, amount, quality, situation, location, attribution of ownership or use right of the mortgaged property; and
- (4) the security scope.

Article 186 The mortgagee and the mortgagor may, prior to the expiration of the time limit for paying debts, not stipulate that the ownership of the mortgaged property will attributed to the obligee when the obligor fails to pay its due debts.

Article 187 In case properties as provided for in Items (1), (2) and (3) of Paragraph 1 of Article 180 in the present Law or a building under construction in Item (5) are mortgaged, the mortgage registration shall be gone through, and such mortgage right shall be established as of the date of registration.

Article 188 In case properties as provided for in Items (4) or (6) of Paragraph 1 of Article 180 of the present Law or a vessel or aircraft under construction as provided for in Item (5) are mortgaged, the mortgage right shall be established since the mortgage contract comes into effect; without the registration, the mortgage right may not challenge any third party with good faith.

Article 189 As regards the mortgage of the chattels prescribed in Article 181 of the present Law provided by an enterprise, individual industrial and commercial household or agricultural production operator, registration shall be handled by the administrative department for industry

and commerce at the locality of the mortgagor. The mortgage right shall be established since the mortgage contract comes into effect; without the registration, such mortgage right may not challenge any third party with good faith. The mortgage as provided for in Article 181 of the present Law may not challenge the buyer which has paid a reasonable price and obtained the mortgaged property in normal business operations.

Article 190 Where the mortgaged property has been leased prior to the entering into of the mortgage contract, the original leasehold relations may not be impacted by the mortgage right. Where it is leased after the establishment of the mortgage right, the leasehold relation may be challenge the registered mortgage right.

Article 191 Where a mortgagor alienates, upon consent of the mortgagee, the mortgaged property during the mortgage term, the money generated from such alienation shall be used to pay off debts to the mortgagee in advance or be submitted to a competent authority for keeping. The value exceeding the obligee's rights shall be attributed to the mortgagor, and the gap shall be paid off by the obligor. Without the mortgagee's consent, a mortgagor may not alienate the mortgaged property during the mortgage term,, unless the transferee pays off the debts on behalf of the mortgagor so as to terminate the mortgage right.

Article 192 The mortgage right may not be alienated alone, or be used as a security for other obligee's rights by departing from the obligee's rights. Unless it is otherwise prescribed by any law or is otherwise stipulated by the parties concerned, when the obligee's rights are alienated, the mortgage right thereof shall be alienated concurrently.

Article 193 Where any act of the mortgagor may sufficiently cause the reduction of the value of the mortgaged property, the mortgagee has the right to require the mortgagor to cease such act. Where the value of the mortgaged property has been lowered, the mortgagee has the right to require the mortgagor to recover the value, or provide a security equal to the reduced value. Where the mortgagor neither recovers the value nor provides any security, the mortgagee has the right to require the obligor to pay off the debts in advance.

Article 194 A mortgagee may abandon the mortgage right or the sequence thereof. A mortgagee and a mortgagor may, through negotiations, alter the sequence of the mortgage right or the amount of secured obligee's rights, etc., however, such alteration may not produce unfavorable influences on any other mortgagee without the written consent thereof. Where an obligor creates the mortgage by its/his own properties, and the mortgagee abandons the mortgage right or the sequence thereof or alter such mortgage right, other security providers shall, within the scope for which the said mortgagee has lost the right to seek preferred payments, be exempted from the security liability, unless any of other security providers promises to provide the security all the same.

Article 195 When the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the right to mortgage arises, the mortgagee may, upon negotiation with the mortgagor, convert the mortgaged property into money or seek preferred payments from

the money generated from the auction or sale of the mortgaged property. Where the said agreement has injured the interests of any other obligee, the obligee may, within one year after he/it has known or should know the cause for cancellation, require the people's court to cancel such agreement. Where no agreement on the means of realizing the mortgage right is achieved between the mortgagee and the mortgagor, the mortgagee may require the people's court to auction or sell off the mortgaged property. When converting into money or selling off the mortgaged property, its market price shall be referred to.

Article 196 As regards the mortgage created in accordance with Article 181 of the present Law, the mortgaged property shall be determined when any of the following circumstances arises:

- (1) Upon expiration of the time limit for paying debts, the obligee's rights have not been realized;
- (2) The mortgagor has been declared bankrupt or has been canceled;
- (3) Other circumstances as stipulated by the parties concerned occurs for realizing the mortgage right; or
- (4) Any other circumstance seriously impacting the realization of obligee's rights.

Article 197 When the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right arises, and the mortgaged property is thus seized by the people's court in accordance with law, the mortgagee has the right to collect natural or statutory fruits of the mortgaged property as of the date of seizure, unless the mortgagee has failed to inform the subject liable to pay off statutory fruits. As regards the "fruits" as referred to in the preceding paragraph, they shall be firstly used for paying the collection expenses thereof.

Article 198 The value exceeding the obligee's rights shall be attributed to the mortgagor, and the gap shall be paid off by the obligor, after the mortgaged property has been converted into money, auctioned or sold off.

Article 199 In case a same property is mortgaged to two or more obligees concurrently, the money generated from the auction or sale of the mortgaged property shall be used for paying debts in light of the prescriptions as follows:

- (1) In case all the mortgage rights to have been registered, the payments shall be made according to the registration sequence; and where the sequence is the same, the payments shall be made on the basis of the proportion of obligee's rights;
- (2) The registered mortgage right shall be cleared off prior to the unregistered one; and
- (3) In case no mortgage right has been registered, the payments shall be made on basis of the proportion of obligee's rights.

Article 200 The buildings newly constructed on the land after the mortgage of the right to use construction land may not belong to the mortgaged properties. Such newly-constructed buildings can be disposed of together with the disposal of the aforesaid right to use construction land so as to realize the mortgage right, however, the mortgagee has no right to seek preferred payments from the money generated from the disposal of these newly-constructed buildings.

Article 201 As regards the mortgage of the right to the contracted management of land as provided for in Item (3) of Paragraph 1 of Article 180 of the present Law or the right to use construction land occupied by the plant or any other building of a township or village enterprise as prescribed in Article 183 of the present Law, after such mortgage right is realized, without completing the statutory procedures, the nature of land ownership or land use may not be altered.

Article 202 A mortgagee shall, within the limitation of action for the principal obligee's rights, exercise the mortgage right, otherwise, such mortgage right will not be protected by the people's court.

Section II Mortgage Right at Maximum Amount

Article 203 For ensuring the payment of debts, an obligor or third party may provide mortgage security to the obligee for the obligee's rights that will continuously happen within a certain term, and when the obligor fails to pay its/his due debts or any circumstance as stipulated by the parties concerned for realizing the mortgage right happens, the mortgagee has the right to seek preferred payments from the security properties within the maximum amount of obligee's rights. The obligee's rights existing prior to the establishment of the mortgage right at maximum amount may, upon the consent of the parties concerned, be incorporated into the scope of obligee's rights under the mortgage security at maximum amount.

Article 204 Unless it is otherwise stipulated by the parties concerned, in case part of obligee's rights are transferred prior to the establishment of the mortgage security at maximum amount, the mortgage right at maximum amount may not be transferred.

Article 205 Prior to the determination of the obligee's rights under the mortgage security at maximum amount, the mortgagee and the mortgagor may, upon agreement, alter the term for the determination of the obligee's rights, the scope of obligee's rights or the maximum amount of obligee's rights, however, such alteration may not cause any unfavorable influence to any other mortgagee.

Article 206 The mortgagee's obligee's rights shall be determined, if any of the following circumstances occurs,:

- (1) The stipulated term for the determination of the obligee's rights expires;
- (2) In case there is no stipulation on such term or the related stipulations are not explicit, and where the mortgagee or the mortgagor requires determine the obligee's rights after two years as of the date for the establishment of the mortgage right at maximum amount;
- (3) no new obligee's right may happen;
- (4) The mortgaged property is sealed up or seized;
- (5) The obligor or the mortgagor is declared bankrupt or is revoked; or
- (6) Any other circumstance as prescribed by any other law for determining the obligee's rights arises.

Article 207 The mortgage right at maximum amount shall be governed by, in addition to the provisions in this Section, the provisions on general mortgage right as provided for in Section 1 of this Chapter.

Chapter XVII Pledge Right

Section 1 Chattel Pledge

Article 208 For the security of the payment of debts, an obligor or a third party may pledge his (its) chattels to the obligee for occupation, and when the obligor fails to pay due debts or any circumstance for realizing the pledge right as stipulated by the parties happens, the obligee has the right to seek preferred payments from the pledged chattels. The "debtor" or "third party" as referred to in the preceding paragraph shall be the pledger, the "obligee" shall be the pledgee, and the "chattels" as delivered shall be the pledged property.

Article 209 The chattels, which are forbidden from being pledged by any law or administrative regulation, may not be pledged.

Article 210 For establishing the pledge right, the parties concerned shall enter into a contract on pledge right in written form. In general, a contract on pledge right shall contain the following items:

- (1) the variety and amount of the principal obligee's rights;
- (2) the time limit for the obligor to pay off debts;
- (3) the name, amount, quality and condition of the pledge;
- (4) the scope of security; and
- (5) the time for the deliver of pledged properties.

Article 211 The pledgee and the pledger may not, prior to the time limit for paying debts expires, stipulate that the ownership of pledged properties be attributed to the obligee when the obligor fails to pay due debts.

Article 212 The pledge right shall be established after the pledgee has delivered the pledged properties.

Article 213 Unless it is otherwise stipulated in the contract, a pledgee has the right to obtain the fruits of the pledged properties. The "fruits" as referred to in the preceding paragraph shall be firstly used for paying the expenses for collecting the fruits.

Article 214 Where a pledgee, without consent of the pledger, illegally uses or disposes of the pledged properties within the duration of the pledge right, and thus damages are caused to the pledger, he/it shall make compensations.

Article 215 A pledgee shall be obliged to properly keep pledged properties; and where pledged properties are damaged or lost by virtue of improper keeping, the pledgee shall make compensations. Where pledged properties may be damaged or lost by act of the pledgee, the

pledger may ask for the pledgee to submit them to a competent authority for keeping or require pay debts in advance and take back them.

Article 216 Where any cause not attributable to the pledgee's fault may result in the destruction of the pledged properties or an obvious decrease of the value of the pledge, and which is sufficient to damage the pledgee's rights, the pledgee has the right to require the pledger to provide corresponding security. Where the pledger refuses to do so, the pledgee may auction or sell off the pledged properties, and may, by negotiating with the pledger, seek preferred payments for the obligee's rights in advance with the money generated from such auction or sell-off, or submit the said money to a competent authority for keeping.

Article 217 Where a pledgee transfers, without consent of the pledger, the pledge within the duration of the pledge right, and thus destruction or loss are caused to the pledged properties, he/it shall make compensations to the pledger.

Article 218 A pledgee may abandon the pledge right. Where an obligor provides the pledge right by his/its own properties, and the pledgee abandons the pledge right, unless any of other security providers promises to provide the security all the same, other security providers' security liability will be exempted within the scope for which the pledgee has lost the right to seek preferred payments.

Article 219 Where the obligor has paid off the debts or the pledger has fulfilled the secured obligee's rights in advance, the pledgee shall return the pledged properties. Where an obligor fails to pay off its due debts or any circumstance for realizing the pledge right as stipulated by the parties concerned happens, the pledgee may, by negotiating with the pledger, convert the pledge into money or seek preferred payments from the money generated from the auction or sell-off of the pledged properties. When converting the pledged properties into money or selling off them, their market price shall be referred to.

Article 220 A pledger may, upon expiration of the time limit for paying debts, request the pledgee to exercise the pledge right in a timely manner; if the pledgee fails to do so, the pledger may ask for the people's court to auction or sell off the pledged properties. Where a pledger has requested the pledgee to exercise the pledge right in a timely manner, but the pledgee is lazy to do so and thus damages are caused, the pledgee shall make compensations.

Article 221 After pledged properties are converted into money, auctioned or sold off, the value exceeding the obligee's rights shall be attributed to the pledger, and the gap shall be paid off by the obligor.

Article 222 The pledger and the pledgee may, upon negotiation, set up the pledge right of maximum amount. The pledge right of maximum amount shall be governed by, in addition to the related provisions in this Section, the provisions on mortgage right at maximum amount prescribed in Section II of Chapter 16 of the present Law by reference.

Section 1I Right Pledge

Article 223 Pledge may be established on any of the following rights which an obligor or third party has the right to dispose of:

- (1) money orders, checks, and cashier's checks;
- (2) bonds and deposit receipts;
- (3) warehouse receipts and lading bills;
- (4) transferable fund units and stock rights;
- (5) such transferable property rights in intellectual property as exclusive trademark rights, patent rights, copyrights, etc;
- (6) account receivables; or
- (7) other property rights that can be pledged as prescribed by any law or administrative regulation.

Article 224 The parties concerned shall conclude a written contract for the pledge of a money order, check, cashier's check, securities, deposit receipt, warehouse receipt or bill of lading. The pledge right shall be established after the deliver of the title certificate of the pledge to the pledgee. In case there is no title certificate, the pledge right shall be established after the related department has handled the registration of the pledge.

Article 225 The pledgee may make redemption or pick up the goods, and may, by negotiating with the pledger, seek preferred payments in advance with the redeemed money or the picked up goods, or submit the said money or goods to a competent authority for keeping, in case the date of redemption or delivery of the money order, check, cashier's check, bonds, deposit receipt, warehouse receipt or lading bill of is prior to the deadline of principal obligee's rights.

Article 226 The parties concerned shall enter into a written contract for the pledge of fund units or stock rights. As regards the pledge of fund units or the stock rights that are registered in the securities depository and clearing institution, the pledge right shall be established after the securities depository and clearing institution has handled the registration of the pledge. As regards the pledge of other stock rights, the pledge right shall be established after the administrations for industry and commerce has handled the registration of the pledge. After the fund units or stock rights have been pledged, unless it is otherwise agreed to by the pledger and the pledgee upon negotiations, they may not be alienated. As regards the money incurred from the transfer of fund units or stock rights, the pledger shall fulfill the obligee's rights to the pledgee in advance with it, or submit it to a competent authority for keeping.

Article 227 As regards the pledge such property rights in the intellectual property as registered trademark rights, patent rights, copyrights, etc, the parties concerned shall enter into a written contract, and the pledge right shall be established after the related competent authority has handled the registration of the pledge. After the property rights in the intellectual property have been pledged, unless it is otherwise agreed to between the pledger and the pledgee upon negotiations, the pledger may not alienate the pledge or permit anyone else to use it. As regards the money incurred from the alienation of the pledged intellectual property or the permission of anyone else

to use it, the pledger shall use it to fulfill the obligee's rights in advance, or submit it to a competent authority for keeping.

Article 228 As regards the pledge of receivables, the parties concerned shall enter into a written contract, and the pledge right shall be established after the related credit rating institution has handled the registration of the pledge. After the receivables have been pledged, unless it is otherwise agreed on by the pledger and the pledgee upon negotiations, the pledger may not alienate the pledged receivables. As regards money incurred from the alienation of accounts receivable, the pledger shall use it to fulfill the obligee's rights in advance, or submit it to a competent authority for keeping.

Article 229 The pledge of rights shall be governed by, in addition to the provisions prescribed in this Section, the provisions in Section 1 of this Chapter on the pledge of chattels.

Chapter XVIII Lien

Article 230 Where an obligor fails to pay off its due debts, the obligee may take lien of the chattels that are owned by the obligor and lawfully occupied by the obligee, and has the right to seek preferred payments from such chattels. The "obligee" as referred to in the preceding Paragraph shall be the lienor, and the occupied chattels shall be the property under lien.

Article 231 The chattels taken as lien by the obligee and the obligee's rights shall fall into a same legal relationship, except for the lien between enterprises.

Article 232 As regards chattels of which no lien may be taken as prescribed by law or stipulated by the parties concerned, lien may not be taken of them.

Article 233 Where a property under lien is a divisible object, its value shall be equal to the amount of debts.

Article 234 A lienor shall assume the obligation to properly keep the property under lien, and shall make compensations in case the property under lien is damaged or lost by virtue of improper safekeeping.

Article 235 A lienor has the right to obtain the fruits generated from the property under lien. The "fruits" as referred to in the preceding paragraph shall be firstly used for the payments of the expenses for collecting the fruits.

Article 236 A lienor shall, after the property is taken as lien, stipulate with the obligor the term for the fulfillment of the obligee's rights; and in case of no or unclear stipulation, two months or more shall be given to the obligor for fulfilling the obligee's rights, except for such chattels that are not easy to be kept as fresh goods, perishable goods, etc.. Where the obligor fails to fulfill within the time limit, the lienor may convert the property under lien into money by negotiating with the obligor, or seek preferred payments from the money generated from the auction or sell-off the

property under lien. When the property under lien is converted into money or sold off, its market price should be referred to.

Article 237 An obligor may, upon expiration of the time limit for fulfilling the obligee's rights, require the lienor to exercise the lien; and where the lienor fails to do so, the obligor may ask for the people's court to auction or sell off the property under lien.

Article 238 The obligor shall after the property under lien is converted into money, auctioned or sold off, enjoy the ownership of the value exceeding the obligee's rights or make up shall be attributed to the gap.

Article 239 The lienor has the right to seek preferred payments in case the right to mortgage or the right of pledge has been established on a chattel before it is taken as lien.

Article 240 The lien shall perish in case a lienor loses the possession of the property under lien or accepts other security separately provided by the obligor.

Part V Possession Chapter XIX Possession

Article 241 In case the possession occurs on the basis of a contractual relationship, the related stipulations in the contract shall be apply to the use, proceedings and default liability of the realty or chattel concerned; and the relevant legal provisions shall apply if there is no such stipulation in the contract or the stipulations are not clear,.

Article 242 Where a possessor causes infringes to the realty or chattel under his (its) possession when using them, it/he shall make compensations if being malicious.

Article 243 Where a realty or chattel is possessed by a possessor, the holder may ask for the return of original object and fruits thereof, but necessary expenses for the maintenance of this realty or chattel paid by the bone fide possessor shall be paid possessor l.

Article 244 Where a realty or chattel under possession is damaged or lost, the possessor shall return the insurance money, damages or indemnities for the said destruction or loss to the holder if the holder requires compensations; and a malicious possessor shall make compensations in case the impairment to the holder has not been sufficiently made up.

Article 245 Where a realty or chattel under possession is encroached on, the possessor has the right to require the return of the original object; where any act impairs the possession, the possessor has the right to request the termination of impairment or danger; and where any damage is caused by virtue of encroachment or interference, the possessor has the right to require compensations. The claim of a possessor for returning the original object shall perish, if the possessor fails to exercise it within one year as of the date of encroachment. Supplementary Rules

Article 246 A local regulation may, before any law or administrative regulation prescribes the scope, organ and measures for uniform registration of realties, provide for related matters in accordance with the related provisions in the present Law.

Article 247 The present Law shall enter into force as of October 1, 2007.

Guarantee Law of the People's Republic of China



Order [1995] No.50 of President of the People's Republic of China
June 30, 1995

Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995, promulgated by Order No.50 of the President of the People's Republic of China on June 30, 1995, and effective as of October 1, 1995

Chapter I General Provisions

Article 1 This Law is formulated for the purpose of promoting the capital flow and commodity circulation, safeguarding the realization of obligatory right, and developing the socialist market economy.

Article 2 In such economic activities as loans, sales, goods freight and hire of processing work, etc., where the creditor needs to safeguard the realization of his obligatory right by the way of guarantee, a guarantee may be established in accordance with the provisions of this Law. The modes of guarantee provided for in this Law shall be guaranty, mortgage, pledge, lien and deposit.

Article 3 In activities of guarantee, the principle of equality, voluntariness, fairness and good faith shall be complied with.

Article 4 When a third party offers the creditor a guarantee on behalf of the debtor, he may require the debtor to offer a counterguarantee. The provisions on guarantee of this Law shall be applicable to counter-guarantee.

Article 5 A guarantee contract shall be an accessory contract to the master contract. Where the master contract is invalid, the guarantee contract shall also be invalid. Where an agreement is otherwise reached in the guarantee contract, that agreement shall prevail. Where a guarantee contract is affirmed to be invalid, the debtor, surety or creditor is in fault, they shall respectively bear the relevant civil liability according to their own faults.

Chapter II Guaranty

Section 1 Guaranty and Guarantor

Article 6 In this Law, guaranty means that the guarantor and the creditor agree that, when the debtor fails to perform his debt, the guarantor will perform the debt or bear the liability in accordance with the agreement.

Article 7 A guarantor may be a legal person, other organization or a citizen who has ability to discharge of debts on behalf of others.

Article 8 The state administrative departments shall not be a guarantor, unless they, with the approval of the State Council, transfer loans for the purpose of using the loans of foreign governments or international organizations.

Article 9 Such institutions and social organizations as schools, kindergartens and hospitals, etc., which are established for the purpose of public interest shall not be a guarantor.

Article 10 A branch or functional department of an enterprise as legal person shall not be a guarantor.

If a branch of an enterprise as legal person has been delegated in writing by the legal person, it may offer the guaranty within the delegation extent.

Article 11 No organization or individual may oblige enterprises or financial institutions such as a bank to offer guaranty for others; enterprises and financial institutions such as a bank shall have the right to refuse to offer guaranty for others when they are obliged to.

Article 12 Where there are two or more guarantors for the same debt, the guarantors shall, according to their own guaranty shares agreed in the guaranty contract, bear the guaranty liability. In case of no agreement on the guaranty shares, the guarantors shall bear the joint liability. Thus the creditor may demand any of the guarantors to bear the entire guaranty liability, and any of the guarantors shall bear the obligation to guarantee the entire realization of the obligatory right. The guarantor who has borne the guaranty liability shall be entitled to claim repayment from the debtor, or to demand other guarantors bearing the joint liability to satisfy him their shares that they shall bear.

Section 2 Guaranty Contract and Guaranty Mode

Article 13 The guarantor and creditor shall enter into a guaranty contract in written form.

Article 14 The guarantor and creditor may enter into a guaranty contract respectively as for a single master contract, and may also, within the maximum obligatory right amount as for a loan contract occurred continuously during a certain period or a commodity trade contract, enter into a guaranty contract.

Article 15 A guaranty contract shall contain the following contents:

- (1) the categories and amount of a master obligatory right guaranteed;
- (2) the time limitation to perform the debt by the debtor;
- (3) the guaranty mode;
- (4) the scope guaranteed by the guaranty;
- (5) the time period of guaranty; and
- (6) other items which the two parties consider necessary to agree.

If a guaranty contract has the contents prescribed in the proceeding paragraph incomplete, it may be supplemented.

Article 16 The guaranty mode contains:

- (1) the general guaranty; and
- (2) the joint liability guaranty.

Article 17 That the parties in a guaranty contract agree that, when the debtor cannot perform the debt, the guaranty liability is to be borne by the guarantor, is the general guaranty.

The guarantor of a general guaranty may, without trial or arbitration on the disputes of a master contract, and before the debt cannot be performed yet with compulsory enforcement on the debtors' property according to the law, refuse to bear the guaranty liability for the creditor.

When there is any one of the following circumstances, the guarantor shall not exercise the right prescribed in the proceeding paragraph:

- (1) the address of the debtor has changed, so that it becomes a major difficulty for the creditor to demand him to perform the debt;
- (2) the people's court accepting a debtor's bankruptcy case, orders suspension of execution procedure; or
- (3) the guarantor abandons the right described in the proceeding paragraph in written form.

Article 18 That the parties in a guaranty contract agree that the guarantor and debtor bear the joint liability on a debt, is the joint liability guaranty.

If the debtor of a joint liability guaranty cannot perform the debt at the date of expiration of the debt performance time limitation prescribed in the master contract, the creditor may demand the debtor to perform the debt, and may also demand the guarantor to bear the guaranty liability within the extent of guaranty.

Article 19 If no agreement or the agreement is not clear on the guaranty mode by the parties, the guaranty liability shall be borne according to the joint liability guaranty.

Article 20 The guarantor of a general guaranty and joint liability guaranty shall be entitled to have the counterplead right of the debtor. If the debtor abandons his counterplead right, the guarantor shall still be entitled to have right to counterplead.

The counterplead right means that the right of, when the creditor exercises his obligatory right, the debtor according to legal reasons executing the petition right against the creditor.

Section 3 Guaranty Liability

Article 21 The guaranteed scope of a guaranty concludes the master obligatory right and its interest, contractual fine, damage compensation and expense of credit realization. If there is an agreement otherwise in the guaranty contract, it shall be complied with.

If no agreement or the agreement is not clear on the guaranteed scope of a guaranty by the parties, the guarantor shall bear the liability to the entire debt.

Article 22 During the time period of guaranty, where the creditor assigns the master obligatory right to a third party according to the law, the guarantor continues to bear the guaranty liability

within the original guaranteed scope of the guaranty. If there is an agreement otherwise in the guaranty contract, it shall be complied with.

Article 23 During the time period of guaranty, if the creditor wants to permit the debtor to assign the debt, he shall get the written consent from the guarantor, the guarantor bears no guaranty liability on the debt assigned without his consent.

Article 24 If the creditor and debtor agree to change the master contract, they shall get the written consent from the guarantor, without this written consent, the guarantor bears no longer guaranty liability. If there is an agreement otherwise in the guaranty contract, it shall be complied with.

Article 25 If no agreement on guaranty period between the guarantor and creditor of a general guaranty, the guaranty period shall be 6 months from the date of expiration of the master debt performance time limitation.

During the guaranty period agreed in the contract or described in the proceeding paragraph, if the creditor has not filed a case against the debtor or applied for the arbitration, the guarantor shall be exempted from the guaranty liability; if the creditor has filed a case or applied for the arbitration, the guaranty period shall be applied to the provisions on the discontinuance of limitation of action.

Article 26 If no agreement on a guaranty period between the guarantor and creditor of a joint liability guaranty, the creditor shall be entitled to have the right within 6 months from the date of expiration of the master debt performance time limitation to demand the guarantor to bear the guaranty liability.

During the guaranty period agreed in the contract or described in the proceeding paragraph, if the creditor has not demanded the guarantor to bear guaranty liability, the guarantor shall be exempted from the guaranty liability.

Article 27 The guarantor shall make a guaranty on a credit occurred continuously according to the provisions of Article 14 in this law, if no agreement on guaranty time period, the guarantor may at all times inform the creditor in written form to terminate the guaranty contract, however the guarantor shall, as for the credit occurred before having informed the creditor, bear guaranty liability.

Article 28 Where there are both a guaranty and a guarantee of real right on a same obligatory right, the guarantor shall bear the guaranty liability on the obligatory right except the guarantee of real right.

If the creditor abandons the guarantee of real right, the guarantor shall, within the scope of right abandoned by the creditor, be exempted from the guaranty liability.

Article 29 Where a branch of an enterprise as a legal person enters into a guaranty contract with the creditor without written delegation from the enterprise as legal person or exceeding the extent of delegation, this contract shall be invalid or the part exceeding the extent of delegation shall be invalid; if the creditor and the enterprise as legal person has default, they shall bear the relevant civil liability according to their fault respectively; if the creditor has no default, the civil liability

shall be borne by the enterprise as legal person.

Article 30 If there is any one of the following circumstances, the guarantor shall not bear the civil liability:

- (1) the parties of the master contract collude to defraud the guarantor to offer a guaranty; or
- (2) the creditor of the master contract take means of fraud or coercion to force the guarantor to offer a guaranty against his true intention.

Article 31 After the guarantor has borne the guaranty liability, he shall be entitled to claim repayment from the debtor.

Article 32 After the people's court accepts a debtor's bankruptcy case, if the creditor does not declare his obligatory rights, the guarantor may take part in the bankrupted property distribution, exercise the right to claim repayment in advance.

Chapter III Mortgage

Section 1 Mortgage and Gage

Article 33 The mortgage prescribed in this Law, means a guarantee that a debtor or a third party does not transfer the possession of the property listed in Article 34 in this Law, make the said property as obligatory right. When the debtor does not perform the debt, the creditor shall be entitled to have right to keep the said property to offset the debt or have priority in satisfying his claim out of proceeds from the auction, sale of the said property pursuant to the provisions of this Law.

The debtor or third party prescribed in the proceeding paragraph shall be the mortgagor, the creditor shall be the mortgagee, the property offered to guarantee shall be the gage.

Article 34 The following properties may be mortgaged:

- (1) the house and other land fixtures owned by the mortgagor;
- (2) the machine, transportation means and other property owned by the mortgagor;
- (3) the state-owned right to the use of land, house and other land fixtures which the mortgagor is entitled to dispose of pursuant to the law;
- (4) the state-owned machine, transportation means and other property which the mortgagor is entitled to dispose of pursuant to the law;
- (5) the right to the use of land on the unreclaimed land such as unreclaimed mountains, unreclaimed valleys, unclaimed hills or unreclaimed beaches which is contracted for management by the mortgagor in accordance with law and is agreed to mortgage by the contractee; or
- (6) other property which may be mortgaged in accordance with the law.

The mortgagor may mortgage the properties listed in the proceeding paragraph all together.

Article 35 The obligatory right guaranteed by the mortgagor shall not exceed the value of the gage.

After the property is mortgaged, the surplus part that the said property is more than the obligatory

right guaranteed, may be mortgaged once more, but shall not exceed the surplus part.

Article 36 If the house upon the state-owned land obtained according to the law is to be mortgaged, the right to the use of the state-owned land within the scope the house occupies shall be mortgaged at the same time.

If the right to the use of state-owned land obtained by way of transfer according to the law, when mortgaged the house upon the said state-owned land shall be mortgaged at the same time.

The right to the use of land of enterprises of a township (town) or village shall not be mortgaged separately. If the buildings of enterprises of township (town) or village such as a plant is to be mortgaged, the right to the use of the land within the scope it occupies shall be mortgaged at the same time.

Article 37 the following properties shall not be mortgaged:

- (1) the ownership of land;
- (2) the ownership of the lands owned by collectives such as cultivated land, house sites, private plots of cropland and hilly land shall not be mortgaged, except that prescribed in item 5 of Article 34, paragraph 3 of Article 36 of this Law;
- (3) the facilities for education, the facilities for public health and medicine and other facilities for social benefit of the institutions or social units for purpose of public interest such as schools, kindergartens or hospitals;
- (4) the properties whose ownership or right to use is uncertain or in dispute;
- (5) the properties sealed up, distrained or regulated; or
- (6) other properties which shall not be mortgaged pursuant to law.

Section 2 Mortgage Contract and Gage Registration

Article 38 The mortgagor and the mortgagee shall enter into a mortgage contract in written form.

Article 39 A mortgage contract shall contain the following contents:

- (1) the categories and amount of master obligatory right guaranteed;
- (2) the time limitation to perform the debt by the debtor;
- (3) the name, quantity, quality, situation, address, ownership or right to the use of the gage;
- (4) the extent guaranteed by the mortgage; and
- (5) other items the parties consider necessary to agree.

If a mortgage contract has the contents prescribed in the proceeding paragraph incomplete, it may be supplemented.

Article 40 When entering into a mortgage contract, the mortgagor and the mortgagee shall not agree that, when the mortgagee is not satisfied at date of expiration of the time limitation for the debt performance, the ownership of the gage is to be transferred to the creditor.

Article 41 Where the parties take the properties prescribed in Article 42 of this Law to mortgage, he shall go through the gage registration, the mortgage contract shall be effective as the date of registration.

Article 42 The departments handling the gage registration are as follows:

(1) in case that the right to the use of land without fixtures upon the land is to be mortgaged, it shall be the land administration departments which upon verification issue certificates for the right to the use of land;

(2) in case that the city real estates or the building of the township (town) or village enterprises such as a plant is to be mortgaged, it shall be the departments prescribed by the local people's governments at and above the county level;

(3) in case that the woods are to be mortgaged, it shall be the forestry administration departments at and above the county level;

(4) in case that aircraft, vessels or vehicles are to be mortgaged, it shall be the registration departments for transportation means; or

(5) in case that the equipment or other movables of a enterprise are to be mortgaged, it shall be the administrations of industry and commerce where the properties are located.

Article 43 Where the party takes other properties to mortgage, he may go through the gage registration on a voluntary basis, the mortgage contract shall be effective as the date of registration.

The party who has not handled the gage registration shall not be opposed to a third party. If the party goes through the gage registration, the registration department is to be the notary department of the area where the mortgagor is located.

Article 44 When the gage registration is to be handled, the following documents or their copies shall be produced to the registration department:

(1) the master contract and the mortgage contract; and

(2) the certificate of ownership of or right to the use of the gage.

Article 45 The information registered by the registration department shall be allowed to inquire and read, copy by hand and copy.

Section 3 Effect of Mortgage

Article 46 Within the guaranteed scope of a mortgage shall be the master obligatory and its interest, contractual fine, damage compensation and expense of realization of mortgage. If there is an agreement otherwise in the mortgage contract, it shall be complied with.

Article 47 At the date of expiration of the debt performance period, if the debtor has not performed the debt so that the gage has been distrained by the people's court, from the date of distraining the mortgagee shall be entitled to collect the natural fruits separated from the gage and the legal fruits that the mortgagee may collect on the gage. If the mortgagee has not informed the fact of the distraining of the gage to the obligatory person who shall satisfy the claim out of proceeds for the legal fruits, the effect of mortgage shall not extend to the said fruits.

The fruits of the proceeding paragraph shall eliminate in advance the expense of collecting the fruits.

Article 48 If the mortgagor wants to mortgage a property that has been leased, he shall notify the leased in writing, and the original lease contract continues to be effective.

Article 49 During the period of mortgage, if the mortgagor assigns the gage registered, he shall inform the mortgagee and also notify the assignee of the situation that the grant has been mortgaged; if the mortgagor does not inform the mortgagee or notify the assignee, the assigning behavior shall be invalid.

If the value amount of the gage assigned is obviously lower than its value, the mortgagee may demand the mortgagor to offer the equivalent guarantee; if the mortgagor does not offer, the gage shall not be assigned.

The value amount from assigning the gage by the mortgagor shall satisfy in advance the mortgagee for the claim out of the proceeds on the obligatory right guaranteed or be deposited to the third party he agreed with the mortgagee. The part exceeding the amount of the obligatory right, shall be owned by the mortgagor, while the short part shall be satisfied by the debtor.

Article 50 The mortgage right shall not be separated from the obligatory right so that it is assigned solely or as a guarantee of other obligatory rights.

Article 51 If the behavior of the mortgagor causes the value of the gage to decrease, the mortgagee shall be entitled to have right to demand the mortgagor to stop his behavior. When the value of the gage decreases, the mortgagee shall be entitled to have right to demand the mortgagor to restore the value of the gage, or offer a guarantee equivalent to the value decreased.

If the mortgagor has no fault for the decrease of the value of the gage the mortgagee shall demand the mortgagor to be offered only within the extent of compensation for the damage obtained by the mortgagor. The part of the gage of which the value does not decrease, shall still be the guarantee of the obligatory right.

Article 52 The mortgage shall exist simultaneously with the obligatory right it guarantees, where the obligatory right is extinct, the mortgage shall be extinct as well.

Section 4 Realization of Mortgage

Article 53 At the date of expiration of the debt performance period if the mortgagee has not been satisfied with the claim out of proceeds, he may make an agreement with the mortgagor to keep the said property to offset the gage or satisfies his claim out of proceeds from the auction, sale of the said gage; if failing to make an agreement, the mortgagor may file a case to the People's Court. After the gage is set off, auctioned or sold, the part of the value amount exceeding the amount of the obligatory right shall be owned by the mortgagor, the short part shall be satisfied by the debtor.

Article 54 If there are two or more creditors who have a mortgage on the same property, the value amount obtained from the auction, sale of the gage shall be satisfied pursuant to the following provisions:

(1) where the mortgage contract is effective through registration, it shall be satisfied in the

registration sequence of the gage; if equal in sequence, then it shall be satisfied according to the proportion of the obligatory right; or

(2) where the mortgage contract is effective as the date of signing, and the said gage has been registered, it shall be satisfied according to the item 1 of this Article; if the gage has not registered, it shall be satisfied in the sequence of the effective date of the contracts, and if equal in sequence, it shall be satisfied according to the proportion of the obligatory right. The registered gage has priority to the unregistered gage.

Article 55 After the signing of the city real estates mortgage contract, the houses built lately upon the land shall not belong to the gage. When the said mortgaged real estates is needed to be auctioned, the lately built houses upon the land may be auctioned together with the gage, but as for the amount from the auction of the lately built houses, the mortgagee shall not be entitled to have priority in satisfying the claim out of proceeds.

Where the right to the use of land of the unreclaimed land contracted for management according to this Law is to be mortgaged, or the right to the use of the land within the extent occupied by the buildings of the township (town) or village enterprises such as a plant is to be mortgaged, after the realization of mortgage, the collective ownership and purpose of the land shall not be changed without the legal procedure is gone through.

Article 56 The value amount obtained from the auction of the right to the use of the stated-owned land appropriated, after paying the amount equivalent to the transfer fee of the right to the use of land which shall be paid, the mortgagee shall be entitled to have right in priority for the claim out of proceeds.

Article 57 The third party who offers guarantee of a mortgage on behalf of the debtor, after the realization of the mortgage by the mortgagee, shall be entitled to have right to claim repayment from the debtor.

Article 58 The mortgage right extinguishes with the extinction of the gage. The compensation for the extinction shall be as the mortgaged property.

Section 5 Mortgage of the Maximum Amount

Article 59 The mortgage of the maximum amount prescribed in this Law, means that the mortgagor and the mortgagee agree, within the extent of maximum amount of the obligatory right, to take the gage as the guarantee of the obligatory right occurred continuously during a certain period.

Article 60 A loan contract may be attached with a mortgage contract of maximum amount. The contract signed by the creditor and debtor on a certain item commodity with which the trade occurs continuously during a certain period, may be attached with a mortgage contract of maximum amount.

Article 61 The obligatory right of the master contract with the mortgage of maximum amount

shall not be assigned.

Article 62 The mortgage of maximum amount shall, besides that it is applied to the provisions of this section, be applied to other provisions of this Chapter.

Chapter IV Pledge

Section 1 Pledge of Movables

Article 63 The pledge of movables described in this Law, means that the debtor or the party delivers his movables to the creditor for possession, and takes the said movables as the guarantee of the obligatory right. When the debtor does not perform the debt, the creditor shall be entitled to have right to keep the said movables to offset or have priority in satisfying in the claim out of proceeds from the value amount of the auction or sale of the said movables.

The debtor or the third party prescribed in the proceeding paragraph shall be a pledgor, the creditor shall be a pledgee, the movables delivered shall be the pledgings.

Article 64 The pledgor and the pledgee shall enter into a pledge contract in writing.

A pledge contract shall be effective as the date of remitting the pledgings to the pledgee.

Article 65 A pledge contract shall contain the following contents:

- (1) the categories and amount of the master obligation right guaranteed;
- (2) the time period to perform the debt by the debtor;
- (3) the name, quantity, quality and situation of the pledgings;
- (4) the extent guaranteed by the pledge;
- (5) the time to deliver the pledgings; and
- (6) other items which the parties consider necessary to agree.

If a pledge contract has the contents incompletely prescribed in the proceeding paragraph, it may be supplemented.

Article 66 The pledgor and the pledgee shall not agree that, when the pledgee is not satisfied at date of expiration of the time limitation for the debt performance, the ownership of the pledgings is to be transferred to the pledgee.

Article 67 The guaranteed scope of a pledge shall conclude the master obligatory right and its interest, contractual fine, damage compensation, expense for keeping the pledgings and expense for realization of pledge. If there is an agreement otherwise in the pledge contract, it shall be complied with.

Article 68 The pledgee shall be entitled to have right to collect the fruits produced by the pledgings. If there is an agreement otherwise in the pledge contract, it shall be complied with.

The fruits of the proceeding paragraph shall eliminate in advance the expense of collecting the fruits.

Article 69 The pledgee shall bear the obligation to keep the pledgings properly. If he does not keep the pledgings properly so that the pledgings are extinct or damaged, the pledgee shall bear the civil liability.

If the pledgee cannot keep the pledgings properly which probably cause the extinction or damage of the pledgings, the pledgor may demand the pledgee to have the pledgings to be deposited, or demand to satisfy the obligatory right before the date of expiration in order that the pledgings can be returned.

Article 70 If there is a probability of damage of or obvious deduction of the value of the pledgings that is enough to hurt the rights of the pledgee, the pledgee may demand the pledgor to offer the relevant guarantee. If the pledgor does not offer the guarantee, the pledgee may auction or sell the pledgings, and make an agreement with the pledgor that the value amount obtained from the auction or sale is used to satisfy the obligatory right guaranteed before the date of expiration or to be deposited to the third party whom he agrees with the pledgor.

Article 71 At the date of expiration of the debt performance time limitation if the debtor has performed the debt, or the pledgor has satisfied the obligatory right guaranteed before the date of expiration, the pledgee shall return the pledgings.

At the date of expiration of the debt performance time limitation if the pledgee has not been satisfied, he may make an agreement with the pledgor to keep the pledgings to offset, or to auction, sell the pledgings.

After the pledgings are kept to offset or auctioned, sold, the part that the value amount exceeds the amount of the obligatory right shall be owned by the pledgor, the short part shall be satisfied by the debtor.

Article 72 The third party who offers the guarantee of a pledge on behalf of the debtor shall, after the realization of the pledge by the pledgee, be entitled to have right to claim repayment from the debtor.

Article 73 The right of the pledge extinguishes with the extinction of the pledgings. The compensation for the extinction shall be as the pledged property.

Article 74 The pledge shall be existed simultaneously with the obligatory right it guarantees, where the obligatory right is extinct, the pledge is extinct as well.

Section 2 Pledge of Rights

Article 75 The following rights may be pledged:

- (1) a bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt;
- (2) the share or share paper which may be assigned according to the law;
- (3) the property right of the exclusive right to use trademark, patent right, copyright which may be assigned according to the law; or
- (4) other rights which may be pledged according to the law;

Article 76 Where the bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt is to be pledged, the right voucher shall be delivered to the pledgee within the time limitation agreed in the contract. The pledge contract shall be effective from the date of delivery of the right voucher.

Article 77 Where the bill of exchange, check, promissory note, bond, deposit receipt, bill of lading or warehouse receipt with clear record of the date of cashing or delivery of the goods is to be pledged, if the date of cashing or delivery of the goods is before expiration of the debt performance time period, the pledgee may make a cashing or delivery of the goods before the date of expiration of the debt performance time period, and make an agreement with the pledgor that the value amount cashed or the goods delivered is to be used to satisfy the obligatory right guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Article 78 Where the share paper that may be assigned according to the law is to be pledged, the pledgor and the pledgee shall enter into a written contract, and go through the pledge registration to the security registration institution. The pledge contract shall be effective as the date of registration.

After the share paper is pledged, it shall not be assigned, however it may be assigned with the agreement between the pledgor and the pledgee. The value amount obtained from the assignment of the shares by the pledgor shall be used to satisfy the pledgee the obligatory right guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Where the shares of a limited liability corporation are to be pledged, it shall be applied to the concerned provisions of the Corporation Law on the assignment of shares. The pledge contract shall be effective as the date of recording the pledge of the shares in the shareholders' name list.

Article 79 Where the property right of the exclusive right to use trademark, patent right or copyright which may be assigned according to the law is to be pledged, the pledgor and the pledgee shall enter into a written contract, and go through the pledge registration to its administration department. The pledge contract shall be effective as of the date of registration.

Article 80 After the right prescribed in Article 79 is pledged, the pledgor shall not assign or permit others to use them, however it may be assigned with the agreement between the pledgor and the pledgee. The assignment fee, permission fee obtained by the pledgor shall be used to satisfy the obligatory right of the pledgee guaranteed before the date of expiration or to be deposited to the third party he agrees with the pledgee.

Article 81 The pledge of rights shall, besides that it is applied to the provisions of this section, be applied to other provisions of Section 1 in this Chapter.

Chapter V Lien

Article 82 The lien prescribed in this Law means that, according to the provisions of Article 84 in

this Law, the creditor possess the property of the debtor according to the agreement of the contract, if the debtor does not perform the debt pursuant to the time limitation agreed in the contract, the creditor shall be entitled to have right to have a lien on the said property according to this Law, to keep the said property to offset or have priority in satisfying for the claim out of proceeds from the value amount of the auction, sale of the said property.

Article 83 The guaranteed scope of a lien shall conclude the master obligatory right and its interest, contractual fine, damage compensation, expense for keeping the subject with a lien and expense for realization of the right of lien.

Article 84 As for the obligatory right occurred with the contract of safekeeping, contract of carriage or contract for processing work, if the debtor does not perform the debt, the creditor shall be entitled to have a lien on it.

Other contracts in which a lien may be agreed prescribed by the laws, shall be applied to the provisions of the proceeding paragraph.

The parties may agree in the contract the subject that shall not be had with a lien.

Article 85 If the property with a lien is separable, the value of the subject with a lien shall be equal to the amount of the debt.

Article 86 The lienor shall bear the obligation to keep the subject with a lien properly. If he does not keep the subject with a lien properly so that the subject with a lien is extinct or damaged, the lienor shall bear the civil liability.

Article 87 The creditor and the debtor shall agree in the contract that, after the creditor has a lien on the property, the debtor shall perform the debt within the time limitation that shall not be less than 2 months. If the creditor and the debtor have not agreed in the contract, after the creditor has a lien on the property of the debtor, he shall determine a time limitation of more than 2 months, inform the debtor to perform the debt within the said time limitation.

If the debtor does not perform the debt yet at the date of expiration of the time limitation, the creditor may make an agreement with the debtor to keep the subject with a lien to offset, and may also auction, sell the subject with a lien according to the law.

After the subject with a lien is kept to offset or auctioned, sold, the part of which the value amount exceeds the amount of the obligatory right shall be owned by the debtor, the short part shall be satisfied by the debtor.

Article 88 The right of lien extinguishes,

- (1) if the obligatory right extinguishes; or
- (2) if the debtor offers guarantee otherwise and it is accepted by the creditor.

Chapter VI Deposit

Article 89 The parties may agree that one party will pay the deposit to another party as guarantee. After the debtor performs the debt, the deposit shall offset the value amount or be returned. If the

party who pays the deposit does not perform the debt, he shall not be entitled to have right to demand the deposit to be returned; if the party who accepts the deposit does not perform the debt, he shall return twice the amount of the deposit.

Article 90 The deposit shall be agreed in writing. The parties shall agree the time limitation to pay the deposit in the deposit contract. The deposit contract shall be effective as the date of actual payment of the deposit.

Article 91 The amount of the deposit shall be determined by the parties, but shall not exceed 20 percent of the target amount of the master contract.

Chapter VII Supplementary Provisions

Article 92 The real estate prescribed in this Law indicates the land and the fixtures upon the land such as a house or woods.

The movables prescribed in this Law indicates the subjects except the real estate.

Article 93 The guaranty contract, mortgage contract, pledge contract, deposit contract prescribed in this Law may be a written contract entered into separately, including the mails or letters, faxes between the parties which have the nature of guarantee, and may also be the guarantee articles in the master contract.

Article 94 When the gage, pledging and subject with a lien is offset or sold, the market price shall be refereed to.

Article 95 If any law such as the Maritime Code has specific provisions on the guarantee, they shall be complied with.

Article 96 This Law shall enter into force as of the date of October 1, 1995.

Insurance Law of The People's Republic of China



(Adopted at the 14th meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995; Amended in accordance with the Decision on Modifying the Insurance Law of the People's Republic of China adopted at the 30th Meeting of the Standing Committee of the Ninth People's Congress Oct 28, 2002)

Chapter I General Provisions

Article 1 This law has been formulated with a view to standardizing the insurance activities, protecting the legitimate rights and interests of parties to insurance activities, strengthening the supervision and administration of the insurance business and promoting its healthy development.

Article 2 Insurance used in this law refers to the act of payment of premiums by the insureds to insurers and the responsibility of the insurers to give indemnity to the insureds in case of losses to property of the insureds caused by a specific contingency or perils of death, injury, sickness of the insured upon the stipulated age according to terms as set in the contracts.

Article 3 All insurance activities within the territory of the People's Republic of China shall be governed by this law.

Article 4 Insurance activities shall be subject to the rule of laws and administrative regulations, be in compliance with the social ethics and the principle of free will.

Article 5 The parties concerned in insurance activities shall abide by the principle of good faith in the exercise of rights and performance of obligations.

Article 6 Insurance companies shall be set up according to this law to engage in commercial insurance business. No other entity or individual is allowed to engage in such business.

Article 7 Legal persons and other organizations which want to be insured within the territory of the People's Republic of China shall enter into insurance policy documents with the insurance companies within the territory of the People's Republic of China.

Article 8 In carrying out business, insurance companies shall follow the principle of fair competition. Illicit competition is not allowed.

Article 9 Insurance supervisory and regulatory body under the State Council shall exercise supervision and administration of the insurance business according to the provisions of this law.

Chapter II Insurance Contract

Section 1 General Provisions

Article 10 An insurance contract is an agreement for defining insurance rights and obligations of the insureds and the insurers.

An insured refers to a person who has signed insurance contract with an insurer and undertakes the obligation of paying insurance premiums according to the amount stipulated in the insurance contract.

An insurer refers to an insurance company which has signed insurance contracts with the insured and undertakes the responsibility to pay indemnity or insurance money to the latter.

Article 11 In signing an insurance contract, the insured and the insurer shall observe the principle of fairness, mutual benefit, reaching agreements through consultation and free will without harming the public interest.

Insurance companies or other entities are not allowed to sign insurance contracts with others by coercion except otherwise provided by law or administrative decrees or regulations.

Article 12 An insured shall own the insurable interest in the objects of insurance.

If an insured has no insurable interest in the objects of insurance, the insurance contract shall be invalid.

Insurable interest refers to the interest of the insured in the objects of insurance recognized by law.

Objects of insurance refer to property or related interest insured or life and health of a person insured.

Article 13 An insurance contract shall hold after the insured applies for insurance and the insurer agrees to underwrite the insurance and the two sides have reached agreement on the clauses of the contract.

The insurer shall issue insurance policies or other insurance certificates to the insured in a timely manner and specify on the insurance policies or other insurance documents the contents of the contracts agreed by the two sides. The insured and the insurer, upon agreement, may also conclude insurance contracts in the form of written agreement other than those provided for in the preceding paragraph.

Article 14 After an insurance contract is concluded, the insured shall pay premium as agreed upon in the contract and the insurer shall start to undertake insurance liabilities at the time agreed upon.

Article 15 The insured may terminate the insurance contract after the contract is signed except otherwise provided for by this law or by the insurance contract.

Article 16 The insurer is not allowed to terminate the insurance contract after the contract is signed except otherwise provided for by this law or by the insurance contract.

Article 17 In concluding an insurance contract, the insurer should explain the contents of the clauses of the insurance contract and may raise inquiries on matters concerning the objects of insurance or the insured, and the insured shall make true representations.

If the insured conceals facts deliberately and refuses to perform the obligations of making true

representations or fails to perform the obligations of making representations due to negligence that would be enough to affect the insurer from making the decision of whether or not to agree to accept the insurance or raise the insurance premium, the insurer has the right to terminate the insurance contract.

If the insurant deliberately refuses to perform the obligations of making true representations, the insurer shall not undertake to pay indemnity or insurance money for insured risks that occurs before the contract is terminated and shall not return the insurance premium.

If the insurant fails to perform the obligations of making representations due to negligence, thereby seriously affecting the occurrence of insured risks, the insurer shall not undertake to pay indemnity or insurance money for contingency that occurs before the contract terminates but may return the insurance premium.

Insured risks refer to the contingencies or perils covered by the insurance as agreed upon in the insurance contract.

Article 18 If an insurance contract provides for the exemption of liabilities for the insurer, the insure shall clearly state in before signing the insurance contract. If no clear statement is made about it, the clause shall not be binding.

Article 19 An insurance contract shall contain the following:

- (1) Name and domicile of the insurer;
- (2) Names and residences of the insurant and the insured and the name and residence of the beneficiaries of life insurance.
- (3) Objects of insurance;
- (4) Insurance liability and liability exemption;
- (5) Insurance term and the starting time of insurance liabilities;
- (6) Insured value;
- (7) Insured amount;
- (8) Premium and the method of payment;
- (9) The method of payment of insurance indemnity or insurance money;
- (10) Liabilities for breach of contract and the handling of disputes;
- (11) The year, month and date in which the contract is signed.

Article 20 The insurant and the insurer may reach agreement on related matters other than those stated in the preceding paragraph.

Article 21 The insurant and the insurer, after consultation, may alter the contents of the insurance contract within the valid period of the insurance contract.

In altering the contents of an insurance contract, the insurer shall take notes on the original insurance policies or other insurance documents or attach a rider or a written agreement on the alteration signed by the insurant and the insurer.

Article 22 The insurant, the insured or beneficiaries shall notify the insurer of the occurrence of the insured risks in time after they have learned about them.

The insured refers to a person who is protected by the property or life insurance contract and who

enjoys the right to insurance claims. An insurant may be an insured.

A beneficiary refers to a person who has been designated by the insured or the insurant to enjoy the right to insurance claims. The insurant or the insured may be the beneficiary.

Article 23 In claiming for indemnity or payment according to an insurance contract after an insured risk occurs, the insurant, the insured or the beneficiaries are obliged to provide evidence or materials to prove the nature and causes of the contingency and losses caused by it.

If the insurer deems the evidence or materials provided incomplete according to the agreement in the insurance contract, the insurer shall notify the insurant, the insured or the beneficiaries and demand for additional evidence or materials.

Article 24 After receiving the claim by the insured or beneficiaries for compensation or payment of insurance money, the insurer shall make a timely verification and notify the insured or beneficiary of the verification results; perform the obligations of compensation or payment within ten days after reaching an agreement on the compensation or payment with the insured or beneficiaries if the case is of insured liability. The insurer shall make compensation or payment according to the insured amount and according to the time limit for compensation or payment as agreed in the insurance contract.

If an insurer has failed to perform the obligations provided for in the preceding paragraph, the insurer shall compensate for the losses arising therefrom in addition to the payment of insurance money.

No entity or individual is allowed to illegally interfere in the performance by the insurer of the liabilities to compensation or payment; nor shall it limit the right of the insured or beneficiaries from obtaining the insurance money.

The insured amount refers to the maximum amount for compensation or insurance money payment to be paid by the insurer.

Article 25 If the insurer does not deem a contingency as insured liability after receiving the claims for compensation or insurance money from the insured or beneficiaries, the insurer shall issue a notice to insured or beneficiaries of the refusal of the claim.

Article 26 The insurer shall pay in advance according to the minimum amount determined by the evidence or materials if the amount for compensation or payment cannot be determined within 60 days starting from the date of receiving the insurance claims and related evidence and materials. The differences shall be made up for after the insurer finally determines the amount of compensation or payment.

Article 27 The right to claims for compensation or insurance payment by the insured or beneficiaries covered by insurance other than life insurance shall cease to exist if it is not exercised within two years starting from the date when the insured risk is known.

The right to claims for compensation or insurance payment by the insured or beneficiaries covered by life insurance shall cease to exist if it is not exercised within five years starting from the date of the occurrence of the insured risks.

Article 28 If the insured or beneficiaries falsify the occurrence of insured risks which have not occurred and claim for compensation or insurance payment, the insurer has the right to terminate the insurance contract, with the insurance premiums not to be returned.

If the insurant, the insured or beneficiaries deliberately fabricate the occurrence of the insured risks, the insurer has the right to terminate the insurance contract and shall refuse to perform the obligations of compensation or insurance payment, except otherwise provided for in the first paragraph of Article 64 of this law, with the insurance premiums not to be returned.

If, after an insured contingency occurs, the insurant, the insured or beneficiaries are found to have forged or fabricated related certificates, materials or other evidence to prove the causes of the insured risks or for exaggerating the losses, the insurer shall not compensate or pay for the part falsified.

If the insurant, the insured or beneficiaries are found to have committed one of the acts listed in the preceding three paragraphs that have caused the insurer to pay the insurance money or other expenses, the payment shall be returned or compensated for.

Article 29 If an insurer transfers part of a liability assumed to another insurer, it is re-insurance.

At the request of the re-insurance underwriter, the re-insurer shall make representations of its own liabilities or the related information of the original insurance to the re-insurance underwriter.

Article 30 The re-insurance underwriter shall not claim for the payment of premium from the insurant of the original insurance contract.

The insured or beneficiaries of the original insurance contract shall not claim for compensation or insurance money from the re-insurance underwriters.

The re-insurer shall not refuse to perform or delay the performance of the originally insured liability on the pretext of non-performance of the re-insurance liability by the re-insurance underwriter.

Article 31 If the clauses of an insurance contract are in dispute among the insurer and the insurant, the insured or beneficiaries, the people's court or arbitration organizations shall make interpretations favorable to the insured and beneficiaries.

Article 32 The insurer or re-insurance underwriter shall be obliged to keep confidential the information about the operations and property as well as the privacy of the insurant, the insured, the beneficiary or the re-insurer it has got to know in handling the insurance business.

Section 2 Property Insurance Contract

Article 33 A property insurance contract is an insurance contract with the property or related interests as the object of insurance.

The property insurance contract that appears in this section is called "contract" for short, except otherwise specified.

Article 34 The insurer shall be notified of the transfer of the objects of insurance and the insurance contract shall be altered with the consent of the insurer to continue to underwrite the policy. But

the transport insurance contracts and contracts with otherwise agreements are exceptions.

Article 35 When the insured liability starts for the transport insurance contract and the voyage insurance for means of transport, the parties to the contract may not terminate the contract.

Article 36 The insured shall observe the relevant regulations on fire, safety, production operations and labor protection and protect the objects insured.

According to the contract, the insurer may carry out safety checks of the objects insured and timely put forward written proposals to the insurant or the insured to eliminate unsafe factors or hidden dangers.

If the insurant or the insured has failed to perform its due obligations concerning the safety of the objects insured, the insurer has the right to demand additional insurance premiums or terminate the contract.

The insurer may, with the consent of the insured, adopt precautionary measures in order to safeguard the objects insured.

Article 37 If within the validity period of the contract, the risks of the objects of insurance have increased, the insured shall notify the insurer in good time according to the contract and the insurer has the right to claim for additional insurance premiums or terminate the contract.

If the insured fails to perform the obligation of notifying the insurer of the increased risks, the insurer shall not undertake to compensation for the occurrence of the insured contingencies that occur due to the increase in the risks of the objects insured.

Article 38 The insurer shall reduce insurance premiums and return the corresponding premiums on the daily basis if any of the following cases occurs, except otherwise provided for:

(1) The circumstances on which the premium rating is based have changed and the risks concerning the objects insured have markedly been reduced.

(2)The insured value of the objects of insurance has markedly been reduced.

Article 39 If, before the insured liability starts, the insurant demands termination of the contract, the insurant shall pay commissions to the insurer and the insurer shall return the premiums paid. If, after the insured liability starts, the insurant demands the termination of the contract, the insurer may collect the insurance premiums due for the period from the date when the insured liability starts to the date of the termination of the contract, with the remaining returned to the insurant.

Article 40 The insured value of the objects insured shall be agreed upon between the insurant and the insurer and specified in the contract or determined according to the actual value of the objects of insurance at the time when the insured risks occur.

The insured amount shall not exceed the insured value. If it exceeds the insured value, the part in excess shall be invalid.

If the insured amount is less than the insured value, except otherwise provided for, the insurer shall undertake to compensation according to the proportion between the insured amount and the insured value.

Article 41 The insurant of double insurance shall notify all the insurers of the double insurance. If the insured amount of double insurance exceeds the insured value, the total amount of compensation made by all insurers shall not exceed the insured value. Except otherwise provided for in the contract, each insurer shall undertake to compensation according to the proportion of its insured amount in the total insured amount.

Double insurance refers to insurance contracts signed by an insurant with more than two insurers for the same objects of insurance, the same insurable interest and the same insured risks.

Article 42 When an insured risk occurs, the insured shall be obliged to adopt all necessary measures to prevent or mitigate losses.

After an insured risk occurs, all the necessary and reasonable cost paid by the insured to prevent or mitigate the losses of the objects insured shall be covered by the insurer. The amount undertaken by the insurer shall be calculated separately from the compensation for the losses of the objects insured, with the maximum amount not exceeding the insured amount.

Article 43 If part of the objects insured sustains losses, the insurant may terminate the contract within 30 days after the insurer pays the indemnities. Except otherwise provided for, the insurer may also terminate the contract. In the case in which the insurer terminates the contract, the insurer shall notify the insured 15 days in advance and return the premiums on the part not sustaining losses to the insured after deducting the part receivable from the date when the insured liability starts to the date when the contract is terminated.

Article 44 If, after an insured risk occurs, the insurer has paid up all the insured amount and the insured amount is equal to the insured value, all the rights of the objects insured sustaining losses shall be in the possession of the insurer. If the insured amount is less than the insured value, the insurer shall retain part of the rights according to the proportion between the insured amount and the insured value.

Article 45 If an insured risk occurs due to the damage of the objects insured by a third party, the insurer shall, starting from the date of paying the indemnities, subrogate the insured to exercise the right to indemnities from the liable third party.

If, after the insured risk occurs as provided for in the preceding paragraph, the insured has already obtained indemnities from the third party, the insurers may pay the indemnities in the amount after the indemnities paid by the third party to the insured are deducted.

The subrogation of the insurer to exercise the right to claim for indemnities according to the provisions of the first paragraph of this Article shall not affect the right of the insured to claim for indemnity from the third party on the part not compensated for.

Article 46 If, after an insured risk occurs, the insured has forfeited the right to claim for indemnities from the third party before the insurer pays the insurance money, the insurer shall not undertake to indemnities.

If, after the insurer has paid indemnities to the insured, the insured forfeits the right to indemnities from the third party, without the insurer's consent, the act is invalid.

If, due to the fault of the insured, the insurer cannot subrogate the insured to exercise the right to

claim for indemnities, the insurer shall reduce the payment of insurance money correspondingly.

Article 47 Except the family members or other members of the insured deliberately cause the insured risk to occur as provided for in the first paragraph of Article 44 of this law, the insurer shall not subrogate the family members or other members of the insured to exercise the right to indemnity claims.

Article 48 When the insurer exercises the right of subrogation to indemnity claims, the insured shall provide the insurer with necessary documents and the related information in its knowledge.

Article 49 The necessary and reasonable expenses paid by the insurer and the insured for investigating and establishing the nature and the causes of the insured risks and the losses of the objects of insurance shall be covered by the insurer.

Article 50 The insurer shall, according to the provisions of law or the agreement in the contract, directly pay insurance money to the third party if damages are caused by the insured covered by the liability insurance.

Liability insurance refers to insurance that makes the liability to indemnities of the insured to the third party as the object.

Article 51 If the insured risk that has caused harm to the third party due to the insured is brought for arbitration or before the court, the necessary and reasonable expenses as arbitration fees or the litigation expenses paid by the insured shall be covered by the insurer.

Section 3 Life Insurance Contract

Article 52 A life insurance contract is an insurance contract that takes the life and body of persons as the objects of insurance.

The life insurance contract is called "contract" for short except otherwise specified.

Article 53 An insurant shall have the insurable interest for the following people:

- (1) The insurant himself;
- (2) Spouse, children and parents;
- (3) Other members of the family or blood relatives other than those specified in the preceding paragraph for whom the insurant has or shares the obligations of support.

Except the provisions of the preceding paragraph, if the insured agrees to let the insurant to sign the contract for him, the case shall be regarded as the insurant having insurable interest in the insured.

Article 54 If the age of the insured stated by the insurant is not true and the true age does not conform to the age limit agreed in the contract, the insurer may void the contract and return the insurance premium after deducting the commissions, except when the time has exceeded two years starting from the date of the conclusion of the contract.

If the insurance premium paid by the insurant is less than what is payable due to the misstatement

of age on the part of the insurant, the insurer has the right to correct and demand retroactive payment of premiums from the insured or pay the insurance money according to the proportion of the premiums actually paid and the premiums payable.

If the insurance premium paid by the insurant is more than what is payable due to the misstatement of age on the part of the insurant, the insurer shall return the premiums in excess of the due amount.

Article 55 The insurant is not allowed to take out the whole life policies for people incapable of civil acts; neither shall the insurer underwrite such policies.

But the cases in which parents take out life insurance policies for their children not coming of age are not limited by the preceding provisions. But the lump sum settlement upon the death of the insured shall not exceed the limit set by the insurance supervision and administration department.

Article 56 A contract that makes death as the conditions for payment of proceeds shall be invalid without the written approval of the insured for the contract and the insured amount.

The insurance policies issued according to the contract that makes death as the conditions for payment of proceeds shall not be transferred or used as mortgage without the written approval of the insured.

But the life insurance taken by parents for their children not coming of age is not limited by the provisions in the first paragraph of this article.

Article 57 After a contract comes into effect, the insurant may pay the insurance premium by a lump sum or by installments as agreed upon in the contract.

If a contract provides for the payment of premium in installments, the insurant shall pay the first payment of premiums at the time when the contract is signed and pay the rest according to the time limit set in the contract.

Article 58 After the insurant pays the first payment of premiums according to contract that provides for premium payment in installments, but the insurant fails to pay the premium of the period within 60 days of the prescribed period, the contract shall become void or the insurer shall reduce the insured amount according to the conditions provided for in the contract.

Article 59 In the case of the void of the contract as provided for in the preceding article, the effect of the contract may be restored after the insurer and the insured reach agreement through consultation and the insurant pays the premium retroactively. However, in the case when the two sides fail to reach agreement within two years after the termination of the contract, the insurer has the right to terminate the contract.

If the contract is terminated as provided for in the preceding paragraph, the insurer shall return the cash value of the insurance policies as agreed upon in the contract if the insurant has paid up insurance premium for more than two full years. If the insurant has not paid up the premium for two years, the insurer shall return the premium paid after deducting the commissions.

Article 60 The insurer shall not demand payment of premiums for life insurance by taking legal actions.

Article 61 The beneficiaries of life insurance shall be designated by the insured or the insurant. In appointing beneficiaries, the insurant shall get the approval of the insured. If the insured is a person incapable of civil acts or whose capability of civil acts is restricted, the guardian shall appoint the beneficiaries.

Article 62 The insured or the insurant may appoint one or several persons as beneficiaries. In the case of several beneficiaries, the insured or the insurant may determine the order and shares of the benefit among them. If the share of benefit is not determined, the beneficiaries shall share the benefit equally.

Article 63 The insured or the insurant may change the beneficiaries and notify the insurer in writing.

The insurer shall take notes on the insurance policies after receiving the written notice on the change of the beneficiaries. In changing the beneficiaries, the insurant shall get the consent of the insured.

Article 64 After the death of the insured, the insurance money shall be treated as the legacy of the insured and the insurant shall perform the obligation of paying the insurance money to the inheritors of the insured if any of the following cases occurs:

- (1) Beneficiaries are not appointed;
- (2) The beneficiaries die before the insured and there are no other appointed beneficiaries;
- (3) The beneficiaries lose the right to the insurance benefit according to law or forfeit the right to benefit and there are no other beneficiaries.

Article 65 If the insurant or the beneficiaries deliberately cause the death, injury or sickness of the insured, the insurer shall not undertake to pay the insurance money.

If the insurant has paid up insurance premiums for more than two full years, the insurer shall, according to the provisions of the contract, return the cash value of the policies to the other beneficiaries enjoying the right to benefit. If a beneficiary deliberately causes the death or injury of the insured or deliberately and unsuccessfully murders the insured, the beneficiary shall lose the right to the benefit.

Article 66 If the insured to the contract that takes the death of the insured as the condition of payment commits suicide, the insurer shall not undertake to pay the insurance, except the cases provided for in the second paragraph of this article, but the insurer shall return the insurance premiums paid by the insurant according to the cash value of the policy.

If the insured commits suicide two years after the contract that takes death as the condition of payment is signed, the insurer shall pay the insurance according to contract.

Article 67 If the insured deliberately commits crimes that lead to its own injury or death, the insurer shall not undertake to insurance payment. If the insurance premium has been paid for more than two full years, the insurer may return the cash value according to the policy.

Article 68 If a person covered by life insurance dies, is injured or sick due to the acts of any third party, the insurer shall not be entitled to recover from the third party after paying insurance to the insured or beneficiaries. But the insured or the beneficiaries shall have the right to claim compensation against the third party.

Article 69 If a contract is terminated by the insured, who has paid up premiums for more than two full years, the insurer shall return the cash value of the policies within 30 days starting from the date of receiving the notice of contract termination. If the premium has been paid for less than two full years, the insurer shall return the premium after deducting the commissions according to the provisions of the contract.

Chapter III Insurance Company

Article 70 Insurance companies shall adopt the following organizational forms:

- (1) Joint stock company;
- (2) Wholly state-owned company.

Article 71 The opening of an insurance company shall get the approval of the insurance supervision and administration department.

Article 72 The opening of an insurance company shall meet the following requirements:

- (1) It shall have articles of association as provided for by this law and the company law;
- (2) It shall have the minimum registered capital provided for in this law;
- (3) It shall have senior management staff with professional knowledge and work experience;
- (4) It shall have a sound organizational setup and management system;
- (5) It shall have offices and other related facilities that are up to the requirements.

In examining and approving the applications for setting up insurance companies, the insurance supervision and administration department shall take into consideration the need of the development of the insurance business and fair competition.

Article 73 The minimum amount of registered capital for an insurance company shall be RMB200 million.

The minimum amount of registered capital shall be the paid in money capital.

Insurance supervision and administration department may adjust the minimum amount of registered capital in the light of the business lines of an insurance company and its operational scale. But the amount shall not be less than the limit set in the first paragraph of this article.

Article 74 In applying for the establishment of an insurance company, the following documents and materials shall be submitted:

- (1) An application, which should specify the name, registered capital and business line of the insurance company to be set up;
- (2) Feasibility study report;
- (3) Other documents and materials required by the insurance supervision and administration department.

Article 75 An applicant may start preparations for the establishment of the insurance company according to the provisions of this law and the company law after the application passes the preliminary examination. If it has the conditions of establishment as provided for in Article 71 of this law, an official application shall be filed with the insurance supervision and administration department, together with the following documents and materials:

- (1) Articles of association of the insurance company;
- (2) List of shareholders and their shares or investment contributors and the amount of investment each contributes;
- (3) Certificates of credit rating and related materials for shareholders who hold over 10 percent of the shares of the company;
- (4) Certificate for capital verification produced by the registered capital verification organizations;
- (5) Resumes and qualification certificates of senior management personnel to be appointed;
- (6) Operational principles and plans;
- (7) Materials about the operational sites and other facilities associated with the business operations; and
- (8) Other documents and materials as required by the insurance supervision and administration department.

Article 76 Insurance supervision and administration department shall take the decision of approval or disapproval within six months starting from the date of reception of the official applications for establishment of insurance companies.

Article 77 If the establishment of an insurance company is approved, the department of approval shall issue the permit for insurance operation, and the insurance company shall, on the strength of the operational permit, go through the registration procedures with the administrations for industry and commerce and draw the business license.

Article 78 If an insurance company fails to go through the registration procedures without justifiable reasons within six months starting from the date of the acquisition of the insurance operational permit, the permit shall cease to be valid automatically.

Article 79 After the establishment of an insurance company, it shall draw 20 percent of the registered capital as the guaranty funds and deposit them in the banks designated by the insurance supervision and administration department. The deposits shall not be used unless for liquidation purposes.

Article 80 In opening subsidiaries within the territory of the People's Republic of China, an insurance company shall get the approval from the insurance supervision and administration department and obtain insurance business permits for the subsidiaries.

The subsidiaries of an insurance company do not enjoy the status of legal persons, whose civil liabilities shall be borne by the head office.

Article 81 In opening representative offices within the territory of the People's Republic of China ,

an insurance company shall get the approval from the insurance supervision and administration department.

Article 82 An insurance company shall get the approval of the insurance supervision and administration department in one of the following alterations:

- (1) Change in name;
- (2) Change in registered capital;
- (3) Changes in the operational sites of the head office or its subsidiaries;
- (4) Changes in the line of business;
- (5) Separation or consolidation of the company;
- (6) Revision of the articles of association;
- (7) Changes in the investment contributors or the shareholders who hold at least 10 percent of the shares of the company; and
- (8) Other changes as provided for by insurance supervision and administration department.

In replacing board chairman and general manager, an insurance company shall submit it to the insurance supervision and administration department for examining the qualifications.

Article 83 The provisions of the Company Law shall apply with regard to the organizational setup of an insurance company.

Article 84 A wholly state-owned insurance company shall set up a board of supervisors which shall be made up of representatives from the insurance supervision and administration department, related experts and selected staff members of the insurance company. The board shall exercise supervision over the various reserve funds drawn by the company, the minimum ability of payment and the maintenance and increment of the values of state assets and the acts of senior management personnel in observing the laws, administrative decrees or regulations and the acts harmful to the interests of the company.

Article 85 In the cases of separation, consolidation or the occurrence of the causes for dissolution according to the articles of association, an insurance company shall be dissolved with the approval of the insurance supervision and administration department. The company shall set up a liquidation group according to law to conduct liquidation.

Insurance companies operating life insurance businesses are not allowed to be dissolved apart from separation or consolidation.

Article 86 If an insurance company has its insurance operational permit revoked by insurance supervision and administration department due to violations of law or administrative decrees, the insurance company shall be cancelled according to law. The insurance supervision and administration department shall undertake to form a liquidation group to carry out liquidation according to law.

Article 87 If an insurance company becomes insolvent, it shall be declared bankrupt by the People's Courts and with the approval of the insurance supervision and administration department. If an insurance company is declared bankrupt, the liquidation group shall be organized by the

people's courts, insurance supervision and administration department and related personnel to carry out liquidation according to law.

Article 88 If an insurance company with life insurance operations is cancelled or declared bankrupt according to law, the life insurance contracts and reserve funds it holds shall be transferred to another insurance company undertaking life insurance. If the company fails to reach transfer agreement with another life insurance company, the insurance supervision and administration department shall designate a life insurance company to accept the business.

Where any life insurance contract or reserve fund as provided for in the preceding paragraph is transferred or accepted upon the designation of the insurance supervision and administration department, the legitimate rights and interests of the insured and beneficiaries shall be retained.

Article 89 In the case when an insurance company is declared bankrupt, the property shall be liquidated according to the following order after giving priority to paying for the bankrupt expenses:

- (1) To pay the wages of the workers and labor insurance expenses;
- (2) To pay indemnities or insurance money;
- (3) To pay taxes in arrears; and
- (4) To pay debt owed by the company.

If the property is not enough for payment for items in the same order, it shall be paid out proportionately.

Article 90 If an insurance company terminates its business operations according to law, it shall cancel its insurance operational permit.

Article 91 The Company Law and other related laws and administrative decrees and regulations shall apply to items about the establishment, alteration, dissolution and liquidation of an insurance company that have not been provided for in this law.

Chapter IV Insurance Operational Rules

Article 92 The business scope of an insurance company:

- (1) Property insurance, including property loss insurance, liability insurance and credit insurance;
- (2) Personal insurance, including life insurance, health insurance and accidental injury insurance.

No insurer is allowed to engage in property insurance and life insurance concurrently; however, an insurance company undertaking property insurance business may undertake short-term health insurance and accidental injury insurance businesses upon verification of the insurance supervision and administration department.

The business scope of an insurance company shall be verified by the insurance supervision and administration department. An insurance company shall operate within the business scope verified.

An insurance company may not concurrently operate any businesses other than those specified in this Law and other laws and administrative regulations.

Article 93 With the approval of the insurance supervision and administration department, an insurance company may undertake the following re-insurance businesses of the insurance operations provided for in the preceding article:

- (1) Outward re-insurance;
- (2) Inward re-insurance.

Article 94 An insurance company shall draw various kinds of liability reserve funds in accordance with the principles of safeguarding the interests of the insured, and guaranteeing the payment capacity.

The specific measures for drawing and carrying down liability reserve funds by insurance companies shall be formulated by the insurance supervision and administration department.

Article 95 An insurance company shall, according to the insurance indemnities or payment claimed and the insurance indemnities or payment not yet claimed after the insured contingencies occur, draw reserve for outstanding losses.

Article 96 Apart from drawing reserves according to the provisions of the preceding two articles, an insurance company shall draw public accumulation funds according to the provisions of relevant laws, administrative decrees or regulations and the requirements of the state financial and accounting system.

Article 97 In order to protect the interests of the insured and support the steady and safe operations of insurance companies, an insurance company shall draw insurance guaranty fund according to the provisions by the insurance supervision and administration department.

The insurance guaranty fund shall be managed in a concentrated way and be used in a planned way.

The specific measures for management and use of the insurance guaranty fund shall be formulated by the insurance supervision and administration department.

Article 98 An insurance company shall have the minimum payment ability compatible with its size of business operations. The difference of the actual assets subtracting actual liabilities shall not be less than the amount stipulated by the insurance supervision and administration department. If the amount is less than the prescribed amount, capital funds shall be increased to make up for the deficit.

Article 99 The year's premiums retained by an insurance company undertaking property insurance shall not exceed four times that the total of the actual capital fund plus public accumulation fund.

Article 100 The liability undertaken by an insurance company for a risk unit, namely, the maximum loss caused by one insured risk, shall not exceed 10 percent of the total of the actual capital fund plus public accumulation fund. The part in excess of the amount shall be re-insured.

Article 101 The risk unit rating method and plan against huge risks of an insurance company shall be examined and approved by the insurance supervision and administration department.

Article 102 An insurance company shall make re-insurance according to the relevant regulations of the insurance supervision and administration department.

Article 103 An insurance company shall make re-insurance with insurance companies within the territory of the People's Republic of China by priority.

Article 104 Insurance supervision and administration department have the right to restrict or ban insurance companies from re-insuring out to insurance companies outside the territory of the People's Republic of China or accepting inward re-insurance business from outside the territory of the People's Republic of China.

Article 105 The operation of funds of an insurance company shall be steady and safe according to the principle of safety and ensure the property to maintain or increase its value.

The operation of funds of an insurance company is confined to bank deposits, purchasing of government bonds, financial bonds and other way of fund operation provided for by the State Council.

No insurance company may use its funds to set up any security operation organization or enterprise irrelevant to insurance.

The proportion of the fund operated by an insurance company or the funds for specific projects in the total amount of funds shall be provided for by the insurance supervision and administration department.

Article 106 An insurance company and its staff members are not allowed to commit the following acts:

- (1) To deceive insurants, the insured or beneficiaries;
- (2) To conceal important information associated with insurance contracts;
- (3) To obstruct the insured from performing the obligation of making faithful representations according to the provisions of this law or induce the insured not to perform the obligations of making faithful representations provided for by this law.
- (4) To promise rebates or other interests other than those provided for in the contracts to the insurant, the insured or beneficiaries.
- (5) To deliberately fabricate insurance risks that have never occurred to make false indemnities and cheat for insurance money.

Chapter V Supervision and Administration of the Insurance Business

Article 107 The basic insurance clauses and insurance rates for the categories of insurance that concern public interest or the compulsory or newly developed categories of life insurance shall be submitted to insurance supervision and administration department for examination and approval. The insurance supervision and administration department shall abide by the principles of protection of public interest and prevention of unfair competition in the examination and approval. The scope of and specific measures for examination and approval shall be formulated by the insurance supervision and administration department.

The insurance clauses and insurance rates of other categories of insurance shall be submitted to insurance supervision and administration department for record.

Article 108 Insurance supervision and administration departments shall establish and perfect the regulatory index system for payment capacity to monitor the minimum payment capacity of insurance companies.

Article 109 An Insurance supervision and administration department shall have the right to check the operations, financial situation and operation of funds of insurance companies and have the right to demand for the supply of related written reports and materials within the prescribed time limit.

Insurance companies shall be subject to the supervision and check pursuant to law.

An insurance supervision and administration department shall have the right to check the deposits of insurance companies in financial institutions.

Article 110 If an insurance company fails to draw or carry down various reserves or fails to make re-insurance as provided for by this law or seriously violates the provisions of this law about fund operation, insurance supervision and administration department shall order the insurance company to adopt the following measures to correct within a prescribed time limit:

- (1) To draw or carry down various reserves according to law;
- (2) To handle re-insurance according to law;
- (3) To correct the acts of law-violating fund operation;
- (4) To re-appoint leading members and related managing personnel.

Article 111 If insurance supervision and administration department have taken the decision demanding correction within a prescribed time limit according to the provisions of the preceding Article and the insurance company has failed to correct within the prescribed time limit, the insurance supervision and administration department shall decide to send professional personnel or designate related personnel of the insurance company to form an organization to carry out overhaul of the insurance company.

The overhaul decision shall specify the name of the insurance company to be overhauled, causes for overhaul, overhaul organization and time limit for the overhaul and make an announcement.

Article 112 In the course of the overhaul, the overhaul organization has the right to supervise over the routine operations of the insurance company. The responsible members and related managing personnel of the insurance company shall perform their functions under the supervision of the overhaul organization.

Article 113 The original business operations shall continue while the company is being overhauled. But the insurance supervision and administration department have the right to stop it from underwriting new policies or suspend part of its original operations and adjust the operation of funds.

Article 114 If an insurance company subject to overhaul has corrected its law-violating acts and

restored its normal operation, the overhaul organization shall file a report to the insurance supervision and administration department for approval before the overhaul is declared ended.

Article 115 If an insurance company has violated the provisions of this law and jeopardized the public interests and will possibly seriously threaten or has already threatened the payment ability of the company, the insurance supervision and administration department may take over the insurance company.

The purpose of the taking over is to adopt necessary measures against the insurance company taken over in order to protect the interests of the insured, restore the normal operation of the insurance company. The debts and liabilities of the company shall not change due to the take-over.

Article 116 The composition of the take-over organization and methods shall be determined by the insurance supervision and administration department, which shall make an announcement.

Article 117 Upon the expiry of the take-over period, the insurance supervision and administration department may decide to extend the period, but the maximum term of the take-over period shall not exceed two years.

Article 118 Upon the expiry of the take-over period, if the insurance company taken over has restored its ability of normal operation, the insurance supervision and administration department may decide to terminate the take-over.

If the take-over organization deems the property of the insurance company taken over not enough to clear all its debts, it may, with the approval of the insurance supervision and administration department, apply with the people's court for declaring the insurance company bankrupt.

Article 119 An insurance company shall, within three months after the end of each accounting year, submit the operations report, financial and accounting report and related statements to the insurance supervision and administration department and make an announcement according to law.

Article 120 An insurance company shall, at the end of each month, submit the operational statistics of the preceding month to the insurance supervision and administration department.

Article 121 The actuaries to be employed by an insurance company shall have been acknowledged by the insurance supervision and administration department and the insurance companies shall establish an actuarial report system.

Article 122 The business reports, accounting reports, actuarial reports and other related statements, documents and materials must faithfully record the insurance operations, and may not contain any false records, misleading statements or major omissions.

Article 123 An insurer or the insured may retain independent appraisal organizations or experts with legal qualifications to carry out appraisal and evaluation of the insured risks.

The appraisal organizations or experts legally retained to make appraisal and evaluation of the insured risks shall do so impartially pursuant to law. Those causing damages to the insurer or insured deliberately or by neglect shall be liable for compensation pursuant to law.

The appraisal organizations or experts legally retained to make appraisal and evaluation of the insured risks shall follow the laws and administrative regulations with respect to taking charges.

Article 124 An insurance company shall keep properly all the books about its business operations, original vouchers and related materials. The books, original vouchers and related materials provided for in the preceding paragraph shall be kept for at least ten years starting from the date of the termination of insurance contracts.

Chapter VI Insurance Agents and Insurance Brokers

Article 125 An insurance agent is an entity or individual who, entrusted by the insurer, collects commissions from the insurer and, on behalf of the insurer, handles insurance business within the scope authorized by the insurer.

Article 126 An insurance broker is an entity which, for the sake of the interests of the insured, provide intermediary services in signing insurance contracts on behalf of the insured with the insurer and collect commissions according to law.

Article 127 In entrusting an insurance agent to handle the insurance business, an insurer shall sign an agent agreement with the insurance agent to agree upon the rights and obligations as well as other agent matters pursuant to law.

Article 128 An insurance company shall be responsible for the acts of an insurance agent to handle insurance business as authorized by the insurer. If an insurance agent conducts any acts beyond the authorized scope in handling insurance business for the insurer, and the insured is justified to believe that it is authorized and has signed the insurance contract, the insurer shall bear the insurance liabilities; however, the insurer may claim damages against the insurance agent ultra vires pursuant to law.

Article 129 In the handling of life insurance business, an individual insurance agent is not allowed to accept the trust of more than two insurers at the same time.

Article 130 If losses have been incurred on the insured due to the fault of an insurance broker, the insurance broker shall be liable to compensation.

Article 131 In handling insurance business, insurance agents and insurance brokers are not allowed to conduct any of the following acts:

- (1) To deceive the insurer, insured, insured or beneficiary;
- (2) To conceal any important information about the insurance contract;
- (3) To frustrate the insured from performing the obligation of faithful statement provided for in this Law, or to induce it not to perform such obligation;

(4) To promise the insurant, insured or beneficiary of any interest other than those stipulated in the insurance contract;

(5) To use their administrative power, position or the advantage of their profession or any other illicit means to force, induce or restrict the insured to sign insurance contracts.

Article 132 An insurance agent and an insurance broker shall acquire the qualifications provided for by insurance supervision and administration department and obtain the insurance agency business permit of insurance brokerage permit from the insurance supervision and administration department and go through the registration procedures with the administrations for industry and commerce, obtain business licenses and pay the guaranty money or take out professional liability insurance policies.

Article 133 An insurance agent and an insurance broker shall have their own operational sites, special books to record the receipts and expenditures of their agency operations or brokerage operations, and accept the supervision by the insurance supervision and administration department.

Article 134 Insurance agency commissions and broker commissions may only be paid to the insurance agents and insurance brokers with legal qualifications, and may not be paid to others.

Article 135 An insurance company shall set up a record of its own insurance agents.

Article 136 An insurance company shall strengthen the training and management of the insurance agents, enhance the professional ethics and quality of the insurance agents, and may not abet or mislead the insurance agents to do any activities against the obligation of good faith.

Article 137 The provisions of Article 109 and Article 119 of this Law shall apply to insurance agents and insurance brokers.

Chapter VII Legal Liability

Article 138 Where any insurant, insured or beneficiary commits any of the following acts for the purpose of deception and if the cases are serious enough to constitute a crime, he shall be subject to criminal liabilities:

(1) The insurant deliberately fabricates the objects of insurance to deceive into getting insurance money;

(2) To defraud the insurer of insurance money by falsifying the occurrence of insured risks that have not actually happened;

(3) To defraud the insurer of insurance money by deliberately causing the occurrence of insured risks that have caused property losses.

(4) To defraud the insurer of insurance money by deliberately causing the death, injury or sickness of the insured and other contingencies.

(5) To defraud the insurer of insurance money by forging or altering certificates, materials and other evidence associated with insured contingencies or by instigating, inducing or buying over

others to provide false evidence, materials or other evidence, or by fabricating the causes of contingencies or exaggerating losses.

If the case involving one of the acts listed in the preceding paragraph is not serious enough to constitute a crime, administrative punishments shall be meted out according to relevant state regulations.

Article 139 If an insurance company or any of its staff members conceals any important information about the insurance contract to deceive the insured or beneficiaries or refuses to perform the liabilities of indemnity or insurance payment as agreed upon in the contract and if the cases are serious enough to constitute a crime, the offender shall be subject to criminal liabilities. If the cases are not serious enough to constitute a crime, the insurance supervision and administrative departments shall impose a fine of more than RMB 50,000 and less than RMB 300,000 on the insurance company concerned; and impose a fine of more than RMB 20,000 but less than RMB 100,000 on the staff members who have violated the law; if the case is serious, the insurance company's business scope shall be restricted or the insurance company shall be ordered to accept new businesses.

If an insurance company or any of its staff members obstructs the insurant from performing its obligation of making true representations or promises any insurant, insured or beneficiary of illegal insurance premium rebates or other interests, and if the case is serious enough to constitute a crime, the offender shall be subject to criminal liabilities pursuant to law; if the case is not serious enough to constitute a crime, the insurance supervision and administration department shall order them to get right and impose a fine ranging from RMB 50,000 to RMB 300,000 on the insurance company concerned; the staff members who have violated the law shall imposed on a fine ranging from RMB 20,000 to RMB 100,000; if the case is serious, the insurance company's business scope shall be restricted or the insurance company shall be ordered to accept new businesses.

Article 140 If an insurance agent or insurance broker is found to have deceived any insurer, insurant, insured or beneficiaries, and if any crime is constituted, he shall be subject to criminal responsibilities pursuant to law; if the case is not serious enough to constitute a crime, the insurance supervision and administration department shall order the agent or broker to correct, concurrently with a fine ranging from more RMB 50,000 to RMB 300,000; if the case is serious enough, the insurance agency business permit or the insurance brokerage business permit shall be revoked.

Article 141 If any insurance company or its staff members is found to have fabricated the occurrence of insured risks to settle claims so as to gain by fraud any insurance money, and if the case is serious enough to constitute a crime, the offender shall be subject to criminal responsibilities pursuant to law.

Article 142 Those who establish insurance companies or engage in commercial insurance activities without authorization in violation of this Law shall be stopped by the insurance supervision and administration department; if a crime is constituted, the offender shall be subject to criminal liabilities pursuant to law; if the case is not serious to constitute a crime, the insurance

supervision and administration department shall confiscate the illegal gains, and impose a fine ranging from 1 time to 5 times of the illegal gains, if there are no illegal gains or the illegal gains are less than RMB 200,000, a fine ranging from RMB 200,000 to RMB 1,000,000 shall be imposed.

Article 143 If an insurance company, in violation of this Law, operates beyond the business scope approved or concurrently operates any business other than those provided for by this Law or any other law and administrative regulation, the offender shall be subject to criminal liabilities pursuant to law if a crime is constituted; if the case is not serious enough to constitute a crime, the insurance supervision and administration department shall order it to correct, and to return the premiums collected, confiscate the illegal proceeds and impose a fine ranging from one time to five times the illegal proceeds; if there are no illegal proceeds or the illegal proceeds are less than RMB 100,000, a fine ranging from RMB 100,000 to RMB 500,000 shall be imposed; if the acts are not corrected within the prescribed time limit or have caused serious consequences, the insurance company shall be ordered to suspend operation for overhaul or its insurance business permit shall be revoked.

Article 144 If an insurance company is found to have changed the name, articles of association, registered capital or the operational sites of the company or its subsidiaries without approval and in violation of this Law, the insurance supervision and administration department shall order it to correct and impose a fine ranging from RMB 10,000 to RMB 100,000.

Article 145 If any of the following acts is committed in violation of the provisions of this law, the insurance supervision and administration department shall order the law violators to correct and concurrently impose a fine ranging from RMB 50,000 to RMB 300,000; if the case is serious, the business scope may be limited or handling of new operations shall be suspended or even the insurance operation permit shall be revoked:

- (1) To fail to draw and deposit guaranty funds or use guaranty funds in violation of the regulations;
- (2) To fail to draw or carry down various kinds of liability reserves or fail to draw reserve for outstanding losses according to the provisions of this law.
- (3) To fail to draw insurance guarantee fund or public accumulation funds;
- (4) To fail to handle re-insurance according to regulations;
- (5) To operate the funds of an insurance company in violation of related provisions;
- (6) To set up subsidiaries or representative offices without approval;
- (7) To separate or consolidate without approval.
- (8) To fail to submit the insurance clauses or rates of the categories of insurance that shall be submitted for examination and approval pursuant to law.

Article 146 If any of the following acts is committed in violation of the provisions of this Law, the insurance supervision and administration department shall order correction, and for failure in the correction within the prescribed time limit, a fine ranging from RMB 10,000 to RMB 100,000 shall be imposed.

- (1) To fail to submit relevant reports, statements, documents and materials according to related

provision;

(2) To fail to submit for the record the insurance clauses or rates of the categories of insurance that shall be submitted for record according to related provisions.

Article 147 If any of the following acts is committed in violation of the provisions of this law, the offender shall be subject to criminal liabilities pursuant to law if a crime is constituted; if the case is not serious enough to constitute a crime, the insurance supervision and administration department shall order the violator to correct and impose on a fine ranging from RMB 100,000 to RMB 500,000; if the case is serious, the business scope may be limited or handling of new operations shall be suspended or even the insurance operation permit shall be revoked:

(1) To provide false reports, statements, documents or materials;

(2) To refuse or obstruct the checks and supervision according to law.

Article 148 If any of the following acts is committed in violation of the provision of this law, the insurance supervision and administration department shall order correction and impose a fine ranging from RMB 50,000 to RMB 300,000:

(1) Serious cases of over-insurance;

(2) To underwrite insurance policies with death as the conditions for payment for people incapable of civil acts.

Article 149 Those who violate the provisions of this Law by illegally engaging in the insurance agency business or brokerage business without getting the insurance agency business permit or brokerage permit, the insurance supervision and administration department shall stop them; the offender shall be subject to criminal liabilities pursuant to law if a crime is constituted; if the case is not serious enough to constitute a crime, the insurance supervision and administration department shall confiscate their illegal proceeds and concurrently impose a fine more than one time and less than five times the illegal proceeds. If there are no illegal proceeds or the illegal proceeds are less than RMB 100,000, a fine ranging from RMB 100,000 to RMB 500,000 shall be imposed.

Article 150 Insurance supervision and administration department shall, regarding the different situations, give such punishments as a warning or replacement and the concurrent imposition of a fine ranging from RMB 20,000 and to RMB 100,000 to the senior management personnel or other people directly responsible for an act that violates the provisions of this Law and is not serious enough to constitute a crime.

Article 151 For an act that violates any provisions of this Law and has caused damages to others, the violators shall undertake the civil responsibility.

Article 152 For those who are found to have approved the application for the establishment of an insurance company not up to the required standards or approved an insurance agent or broker not up to the requirements, or those who abuse their power or neglect their duties, if the cases are serious enough to constitute a crime, the offender shall be subject to criminal liabilities pursuant to law; or administrative sanctions shall be given if the cases are not serious enough to constitute a

crime.

Chapter VIII Supplementary Provisions

Article 153 For marine insurance the relevant provisions of the commercial maritime law shall be abided by. This law shall apply to matters not covered by the commercial maritime law.

Article 154 The provisions of this law are applicable to Chinese-foreign joint equity insurance companies, solely foreign-funded insurance companies and branches of foreign insurance companies; if there are separate provisions by other laws or administrative regulations, those laws and regulations shall apply.

Article 155 The state supports the development of insurance businesses in the service of agricultural production. Regulations on agricultural insurance shall be provided for by other laws and administrative regulations.

Article 156 There shall be separate provisions of laws or administrative regulations concerning insurance organizations other than those provided for in this law.

Article 157 The insurance companies approved before the law is promulgated shall continue to operate and those not up to the requirements provided by this law shall strive to measure up to the requirements within a prescribed time limit. Specific procedures shall be formulated separately by the State Council.

Article 158 The law shall enter into force as of October 1, 1995.

Civil Procedure Law of the People's Republic of China



(Adopted by the Fourth Session of the Seventh National People's Congress on April 9, 1991, promulgated by the Order No 44 of the President of the People's Republic of China, and effective on the date of its promulgation)

Part One General Provisions

Chapter I Aim, Scope of Application and Basic Principles

Article 1 The Civil Procedure Law of the People's Republic of China is enacted on the basis of the Constitution and in line with the experiences and actual conditions of our country in trying civil cases.

Article 2 The aim of the Civil Procedure Law of the People's Republic of China is to protect the exercise of the litigation rights of the parties, ensure that the people's courts ascertain facts, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm the relations of civil rights and obligations, punish acts violating civil law, protect the lawful rights and interests of the parties, educate citizens to voluntarily abide by the law, maintain the social order and economic order, and guarantee the smooth progress of the cause of the socialist construction.

Article 3 The provisions of this Law shall be applicable to civil lawsuits concerning disputes over the property relations and the relations of persons between citizens, between legal persons and between other organizations as well as among citizens, legal persons and other organizations.

Article 4 Whichever engages in civil lawsuits within the territory of the People's Republic of China must abide by this Law.

Article 5 Foreign nationals, stateless persons, foreign enterprises and organizations that institute or respond to proceedings in the people's courts shall have the same litigation rights and obligations as citizens, legal persons and other organizations of the People's Republic of China.

Where the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons and other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises and organizations of that foreign country.

Article 6 The people's courts shall exercise the judicial authority with respect to civil cases. The people's courts shall try civil cases independently in accordance with the law, and shall not be subject to interference by any administrative organ, social group or individual.

Article 7 In trying civil cases, the people's courts must base themselves on facts and take the law as the criterion.

Article 8 The parties to a civil action shall have equal litigation rights. The people's courts shall, in

trying civil cases, guarantee and facilitate the exercise of litigation rights by the parties, and apply the law equally to the parties.

Article 9 In trying civil cases, the people's courts shall conduct conciliation under the principles of voluntariness and lawfulness; where conciliation efforts fail, the people's courts shall render judgments without delay.

Article 10 In trying civil cases, the people's courts shall, as provided for by law, apply the systems of collegial panel, withdrawal, public trial, and the system whereby the second instance is final.

Article 11 Citizens of all nationalities shall have the right to use their native spoken and written languages in civil proceedings.

Where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local nationalities.

The people's courts shall provide interpretation for any participant in the court proceedings who is not familiar with the spoken or written languages commonly used by the local nationalities.

Article 12 In the trial of civil cases by the people's court, the parties shall have the right to debate.

Article 13 The parties shall be entitled, within the scope stipulated by law, to dispose of their civil rights and their litigation rights.

Article 14 The people's procuratorates shall have the right to exercise legal supervision over the civil proceedings activities.

Article 15 If the civil rights and interests of the State, a collective or an individual have been infringed upon, a State organ, social group, enterprise or institution may support the unit or individual being infringed upon to initiate legal action in a people's court.

Article 16 The people's conciliation committees shall be mass organizations to conciliate civil disputes, which are to function under the guidance of the grassroots people's governments and the grassroots people's courts.

A people's conciliation committee shall conduct conciliation in accordance with legal provisions and the principle of voluntariness. The parties concerned shall execute the agreement reached in conciliation: those who refuse a conciliation or those for whom a conciliation has failed or those who have retracted from a conciliation agreement may initiate legal proceedings in a people's court.

In case where a people's conciliation committee violates the law in conciliating civil disputes, a people's court shall make corrections.

Article 17 The people's congresses of the national autonomous areas may formulate adoptive or supplementary provisions in accordance with the principles of the Constitution and this Law and with the specific circumstances of the local nationalities. Such provisions made by an autonomous

region shall be submitted to the Standing Committee of the National People's Congress for approval. The provisions made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant autonomous region or province for approval and to the Standing Committee of the National People's Congress for the record.

Chapter II Jurisdiction

Section 1 Jurisdiction by Level

Article 18 The grassroots people's courts shall have jurisdiction as courts of first instance over civil cases, unless otherwise stipulated by this Law.

Article 19 The intermediate people's courts shall have jurisdiction as courts of first instance over the following civil cases:

- (1) major cases involving foreign interests;
- (2) cases that have major impact on the area under their jurisdiction; and
- (3) cases under the jurisdiction of the intermediate people's courts as determined by the Supreme People's Court.

Article 20 The higher people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:

- (1) cases that have major impact on the whole country; and
- (2) cases that the Supreme People's Court deems it should try.

Section 2 Territorial Jurisdiction

Article 22 A civil lawsuit initiated against a citizen shall be under the jurisdiction of the people's court in the place where the defendant has his or her domicile; if the defendant's domicile is different from his or her habitual residence, the lawsuit shall be under the jurisdiction of the people's court in the place of his or her habitual residence.

A civil lawsuit initiated against a legal person or any other organization shall be under the jurisdiction of the people's court in the place where the defendant has its domicile.

Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The following civil lawsuits shall be under the jurisdiction of the people's court in the place where the plaintiff has his or her domicile; if the plaintiff's domicile is different from his or her habitual residence, the lawsuit shall be under the jurisdiction of the people's court in the place of the plaintiff's habitual residence.

- (1) cases concerning the status of persons not residing within the territory of the People's Republic of China;
- (2) cases concerning the status of persons whose whereabouts have been unknown or who have been declared as missing;
- (3) cases against persons who are undergoing rehabilitation through labor; and
- (4) cases against persons who are being imprisoned.

Article 24 A lawsuit initiated over a contract dispute shall be under the jurisdiction of the people's court in the place where the defendant has his or her domicile or where the contract is performed.

Article 25 The parties to a contract may choose through agreement stipulated in the written contract the people's court in the place where the defendant has his or her domicile, where the contract is performed, where the contract is signed, where the plaintiff has his or her domicile or where the subject matter is located to have jurisdiction over the case, however, such an agreement may not violate the provisions of this Law regarding jurisdiction by level and exclusive jurisdiction.

Article 26 An action initiated for an insurance contract dispute shall be under the jurisdiction of the people's court in the place where the defendant has his or her domicile or where the insured object is located.

Article 27 A lawsuit initiated for a dispute over a bill of exchange shall be under the jurisdiction of the people's court in the place where the bill is paid or where the defendant has his or her domicile.

Article 28 An action initiated for a dispute over railway, highway, water, or air transport or through transport contract shall be under the jurisdiction of the people's court in the place where the transport starts or ends or where the defendant has his or her domicile.

Article 29 An action initiated for an infringing act shall be under the jurisdiction of the people's court in the place where the infringing act took place or where the defendant has his or her domicile.

Article 30 An action concerning claims for damages caused by a railway, highway, water or aviation accident shall be under the jurisdiction of the people's court in the place where the accident occurred or where the vehicle or ship first arrived after the accident or where the aircraft first landed after the accident, or where the defendant has his or her domicile.

Article 31 An action initiated for damages caused by a ship collision or any other maritime accident shall be under the jurisdiction of the people's court in the place where the collision took place or where the collision ship first docked after the accident or where the ship at fault was detained, or where the defendant has his or her domicile.

Article 32 A lawsuit initiated for maritime salvage shall be under the jurisdiction of the people's

court in the place where the salvage took place or where the salvaged vessel first docked after the disaster.

Article 33 A lawsuit initiated for general average shall be under the jurisdiction of the people's court in the place where the ship first docked after the general average took place or the adjustment of the general average was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts specified in this Article:

- (1) an action initiated for real estate shall be under the jurisdiction of the people's court in the place where the estate is located;
- (2) a lawsuit concerning a dispute over harbor operations shall be under the jurisdiction of the people's court in the place where the harbor is located; and
- (3) a lawsuit concerning the succession of an inheritance shall be under the jurisdiction of the people's court in the place where the decedent had his or her domicile upon his or her death, or where the principal part of his or her estate is located.

Article 35 When two or more people's courts have jurisdiction over the same lawsuit, the plaintiff may bring his or her lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, it shall be handled by the people's courts that first files the case.

Section 3 Referral and Designation of Jurisdiction

Article 36 Where a people's court discovers that a case it has accepted is not under its jurisdiction, it shall refer the case to the people's court that has jurisdiction over the case. The people's court to which a case has been referred shall accept the case, and if it considers that, according to relevant regulations, the case referred is not under its jurisdiction, it shall report it to a people's court at the higher level for the designation of jurisdiction, and may not refer it again to another people's court on its own initiative.

Article 37 In case that a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for special reasons, the people's court at the higher level shall designate another court to exercise the jurisdiction.

In the event of a dispute over the jurisdiction between the people's courts, it shall be resolved by the parties to the dispute through consultation; if such consultation fails to resolve the dispute, it shall be reported to a people's court superior to both parties to the dispute for the designation of jurisdiction.

Article 38 Where any party holds an objection to the jurisdiction of the people's court over the case after the court has accepted the case, the party shall raise the objection during the term for filing the bill of defense. The people's court shall examine such an objection raised by the party. If the objection is tenable, the people's court shall order that the case be transferred to the people's court that has jurisdiction over the case; if the objection is untenable, the people's court shall order

to turn it down.

Article 39 People's courts at higher levels shall have the authority to try civil cases over which people's courts at lower levels have jurisdiction as courts of first instance; may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

In case that a people's court at a lower level deems it necessary for a civil case of first instance under its jurisdiction to be tried by a people's court at a higher level, it may request such a people's court to try the case.

Chapter III Trial Organization

Article 40 In trying civil cases of first instance, the people's court shall form a collegial panel consisting of both judges and assessors or of judges alone. The collegial panel must have an odd number of members.

Civil cases to which summary procedure is applied shall be tried by a single judge alone.

The assessors shall, while carrying out their duties as assessors, have equal rights and obligations with the judges.

Article 41 In trying civil cases of second instance, the people's court shall form a collegial panel of judges. The collegial panel must have an odd number of members.

Regarding to a case remanded for a retrial, the people's court of first instance that has originally tried the case shall form a new collegial panel in accordance with the procedure of first instance.

If a case for retrial was originally tried at first instance, a new collegial panel shall be formed according to the procedure of first instance; if the case was originally tried at second instance or was brought up by a people's court at a higher level for trial, a new collegial panel shall be formed according to the procedure of second instance.

Article 42 The president of the court or the chief judge of a division shall designate a judge to serve as the presiding judge of the collegial panel; if the president or the chief judge participates in the trial, he himself or herself shall serve as the presiding judge.

Article 43 The collegial panel shall, when deliberating a case, observe the principle that the minority shall defer to the majority. The deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegial panel. Diverging opinions in the deliberations must be truthfully recorded in the transcript.

Article 44 The judicial personnel shall handle the case impartially and in accordance with the law. The judicial personnel may not accept any treat or gift from the parties or their agents ad litem. Any judicial personnel who commits embezzlement, accepts bribes, practices favoritism for personal gains or perverts the law in making judgment shall be investigated for legal responsibility; if a crime is constituted, criminal responsibility shall be investigated according to law.

Chapter IV Withdrawal

Article 45 Where any judicial personnel has any of the following circumstances, he or she must withdraw, and the parties to the case shall also have the right to request, orally or in writing, that he or she withdraws:

- (1) being a party or a near relative of a party to the case or a near relative of an agent ad litem in the case;
- (2) having a personal interest in the case; or
- (3) having some other relationship with a party to the case that might influence the impartial handling of the case.

The provisions of the preceding paragraph shall also apply to clerks, interpreters, expert witnesses and inspectors.

Article 46 When a party is to request the withdrawal of a member of the judicial personnel, reasons therefor shall be given and the request shall be submitted at the beginning of the proceedings; the request for withdrawal may also be submitted before the end of court debate if the reason for the withdrawal becomes known only after the beginning of the proceedings.

Prior to a decision on withdrawal by the people's court, the person who has been requested to withdraw shall temporarily suspend his or her participation in the proceedings of the case, but with the exception of cases that require the adoption of emergency measures.

Article 47 The withdrawal of a court president who serves as the presiding judge shall be decided by the judicial committee; the withdrawal of judicial personnel shall be decided by the court president; the withdrawal of other personnel shall be decided by the presiding judge.

Article 48 Regarding to a request for withdrawal made by a party, the people's court shall make a decision, orally or in writing, within three days after the request was made. If the party disagrees with the decision, it may apply for reconsideration which could be granted only once. During the period of reconsideration, person who has been requested to withdraw shall not suspend his or her participation in the proceedings of the case. The people's court shall, within three days after receiving the application, make a reconsideration decision and notify the applicant of the decision.

Chapter V Participants in Proceedings

Section 1 Parties

Article 49 Any citizen, legal person or any other organization may become a party to a civil lawsuit. Legal persons shall be represented by their legal representatives in proceedings. Other organizations shall be represented by their principal persons in charge in proceedings.

Article 50 The parties shall have the right to appoint agents, request withdrawals, collect and provide evidence, engage in debate, request conciliation, file an appeal and apply for execution. The parties may consult the materials related the case, and may also reproduce the materials and other legal documents pertaining to the case. The scope and measures on consulting and reproducing materials pertaining to the case shall be made by the Supreme People's Court.

The parties must exercise their litigation rights in accordance with the law, observe litigation procedures and execute the legally effective written judgments or orders and conciliation statements.

Article 51 The two parties may reach a compromise on their own.

Article 52 The plaintiff may relinquish or modify his or her claim. The defendant may confirm or repudiate the claim and shall have the right to file a counterclaim.

Article 53 When one party or both parties consist of two or more persons, the subject matters of actions are the same or of the same category and the people's court considers that, subject to the consent of the parties, the lawsuit can be tried together, a joint lawsuit shall be constituted.

Where the individuals constituting a party to a joint lawsuit have common rights and obligations with respect to the subject matter of action and the act of litigation of one person is recognized by the others of his or her party, such act shall be binding on all the other members of his or her party; where the individuals in one party do not have common rights and obligations with respect to the subject matter of action, then the act of litigation of one person shall have no binding force on the others of his or her party.

Article 54 A joint lawsuit in which one party consists of numerous persons may be brought by representatives selected by and from the party. The act of litigation of such representatives shall be effective for all members of the party they represent, however, modification to or waiver of claims of action, or confirmation of the claims of the other party, or resorting to compromise by the representatives shall be subject to the approval of the party they represent.

Article 55 With respect to a case in which the subject matter of action is of the same category and one party consists of numerous persons or of an uncertain number upon initiation of the lawsuit, the people's court may issue a public notice, stating the particulars and claims of the case and informing claimants to file at the people's court within a fixed period of time.

Claimants who have filed at the people's court may select representatives from among themselves to engage in litigation; if such representatives cannot be created through selection, they may be decided by the people's court through negotiation with the claimants who have filed at the court.

The act of litigation of such representatives shall be effective for the party they represent, however, modification or waiver of claims of action or confirmation of the claims of the other party or resorting to a compromise by the representatives shall be subject to the approval of the party they represent.

The judgments or orders rendered by the people's court shall be effective for all the claimants who have filed at the court. The same judgments or orders shall be binding on the claimants who have not filed at the court but initiated legal proceedings during the limitation of action.

Article 56 If a third party considers that it has an independent claim to the subject matter of action of both parties, it shall have the right to initiate an action.

If a third party has no independent claim to the subject matter of action of both parties, however, the outcome of the case will affect its interest legally, it may file a request to participate in the

proceedings or the people's court shall notify it to participate. A third party that is to bear civil liability as judged by the people's court shall have the litigation rights of a party.

Section 2 Agents ad litem

Article 57 Any person with no capacity for action shall have his or her guardians as statutory agents to represent him or her in the proceedings. If the statutory agents try to shift their responsibilities as statutory agents onto one another, the people's court shall appoint one of them to represent the principal in the proceedings.

Article 58 Each party or legal representative may appoint one or two persons to act as his or her agents ad litem.

A lawyer, a party's near relative, a person recommended by a relevant social group or the unit to which a party belongs or any other citizen approved by the people's court may be entrusted as the party's agent ad litem.

Article 59 When a person entrusts another to act on his or her behalf in the proceedings, he or she must submit to the people's court a power of attorney bearing his or her signature or seal.

The power of attorney must specify the matter and limits of authority entrusted. An agent ad litem must possess special authorization from his or her principal to confirm, relinquish or modify the claim or to resort to compromise or file a counterclaim or an appeal.

A power of attorney mailed or delivered by a citizen of the People's Republic of China residing abroad must be certified by the Chinese embassy or consulate in that country; if there is no Chinese embassy or consulate in that country, the power of attorney must be certified by an embassy or a consulate of a third country that has diplomatic relations with the People's Republic of China stationed in the country, and then transferred for verification to the embassy or consulate of the People's Republic of China stationed in that third state, or by a local patriotic overseas Chinese organization.

Article 60 If the authority of an agent ad litem is changed or revoked, the party shall inform the people's court in writing of such a change or revocation, and the court shall notify the other party of the change or revocation.

Article 61 A lawyer who serves as an agent ad litem and other agents ad litem shall have the right to investigate and collect evidence, and may consult materials pertaining to the case in accordance with relevant regulations. The scope and measures on consulting materials pertaining to the case shall be made by the Supreme People's Court.

Article 62 Where a party to a divorce case has entrusted an agent ad litem, the party himself or herself shall, unless unable to express his or her intention, also appear in court in person; the party who is truly unable to appear in court due to a special reason shall submit his or her opinion in writing to the people's court.

Chapter VI Evidence

Article 63 Evidence includes the following categories:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-video materials;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) expert conclusions; and
- (7) records of inquests.

Any of the above-mentioned evidence must be verified to be true before it can be taken as a basis for ascertaining a fact.

Article 64 A party shall have the responsibility to provide evidence in support of its own propositions.

With respect to the evidence that the party and its agent ad litem are unable to obtain themselves because of objective reasons or that the people's court considers necessary for the trial of the case, the people's court shall investigate and collect it.

The people's court shall, in accordance with the procedure prescribed by law, collect, examine and verify evidence comprehensively and objectively.

Article 65 The people's court shall have the authority to investigate and obtain evidence from the relevant units or individuals, and such units or individuals may not refuse.

The people's court shall distinguish the true from the false, verify and determine the validity of documentary evidence provided by relevant units or individuals.

Article 66 Evidence shall be presented in the court and be cross-examined by the parties. However, evidence that involves State secrets, trade secrets or personal privacy of individuals shall be kept confidential, if it is necessary to be presented in the court, it may not be presented in an open court session.

Article 67 The people's court shall take the legal acts, legal facts and documents notarized according to legal procedures as basis for ascertaining facts, except when there is contrary evidence sufficient to invalidate the notarial certification.

Article 68 Any documentary material submitted as evidence shall be the original one. Material evidence shall also be original. If it is truly difficult to present the original document or material, then reproductions, photographs, duplicates or extracts of the original may be submitted.

If a document in a foreign language is submitted as evidence, a Chinese translation must be appended.

Article 69 The people's court shall distinguish the true from the false, and with the reference of other evidence of the case, examine and determine whether or not the audio-video materials can be taken as a basis for ascertaining facts.

Article 70 All units and individuals who have information about a case shall have the obligation to give testimony in court. Persons in charge of the relevant units shall encourage the witnesses to give testimony. When it would be truly difficult for a witness to appear in court, he or she may, with the approval of the people's court, submit a written testimony.

Any person who is unable to express his or her will properly and correctly shall not testify.

Article 71 The people's court shall examine the statements of the parties in connection with the other evidence of the case to determine whether or not the statements can be taken as a basis for ascertaining facts.

If a party refuses to make a statement, this shall not prevent the people's court from ascertaining the facts of a case on the basis of other evidence.

Article 72 When the people's court deems it necessary to make an evaluation of a specialized problem, it shall refer the problem to an authentication department authorized by law for an evaluation; in the absence of such a department, the people's court shall appoint an authentication department to make the evaluation.

The authentication department and the expert witness designated by the department shall have the right to consult the case materials necessary for the evaluation, and may inquire the parties and witnesses when it is so necessary.

The authentication department and expert witness shall present a written conclusion of the evaluation, and affix his or her seal or signature to it. With respect to an evaluation made by an expert witness, the unit to which the expert witness belongs shall certify his or her status by affixing its seal to the expert conclusion.

Article 73 When inspecting material evidence or a site, the inspector must present his or her credentials issued by a people's court, and shall invite the local grassroots organization or the unit to which the party belongs to send persons to participate in the inquest. The party or an adult member of his or her family shall be present; refusal to appear on the scene shall not prevent the inquest from proceeding.

Upon notification by the people's court, the relevant units and individuals shall have the obligation to preserve the site and assist in the inquest.

The inspector shall make a written record of the circumstances and results of the inquest, on which the inspector, the party and the requested participants shall affix their signatures or seals.

Article 74 Under circumstances where there is a likelihood that evidence may cease to exist or be lost or difficult to obtain later on, the participants in proceedings may apply to the people's court for the evidence to be preserved, the people's court may also take measures to preserve such evidence on its own initiative.

Chapter VII Time Periods and Service

Section 1 Time Periods

Article 75 Time periods shall include those prescribed by law and those designated by the people's

court.

Time periods shall be calculated by the hour, the day, the month and the year. The hour and day from which a time period begins shall not be counted as within the time period.

If the expiration date of a time period falls on a holiday, then the day immediately following the holiday shall be regarded as the expiration date of the time period.

A time period shall not include traveling time, a litigation document that is mailed before the expiration of a time limit shall not be regarded as overdue.

Article 76 If a party fails to meet a deadline due to force majeure or for other justified reasons, the party may apply for an extension of the time limit within 10 days after the obstacle is eliminated, whether or not an extension shall be granted shall be decided by the people's court.

Section 2 Service

Article 77 A receipt shall be required for every litigation document that is served, and the recipient of the service shall sign or affix his or her seal to it and the date of receipt. The date of receipt as signed by the recipient of the service shall be regarded as the date on which the document is served.

Article 78 Litigation documents shall be served directly to the recipient of the service. If the recipient of the service is a citizen, the documents shall, in the case of his or her absence, be received by an adult member of his or her family living with him or her; if the recipient of the service is a legal person or any other organization, the document shall be received by the legal representatives of the legal person or the principal persons in charge of any other organization or the persons of the legal person or any other organization in charge of receiving such documents; if the recipient of the service has an agent ad litem, the documents may be served to the agent ad litem; if the recipient of the service has designated an agent to receive his or her litigation documents and has informed the people's court of it, the documents may be received by the agent. The date of receipt as signed by the adult family member living with the recipient of service, or persons in charge of receiving documents of legal persons or other organizations, or agents ad litem, or agents designated by a party to receive his or her documents shall be regarded as the date on which the document is served.

Article 79 If the recipient of the service of a litigation document or the adult family member living with him or her refuses to accept a legal document, the person serving the document shall ask representatives from the relevant grassroots organization or the unit to which the recipient of the service belongs to be present at on the scene, explain the situation to them, and record on the receipt the particulars of the refusal and the date, after the person serving the document and the witnesses have affixed their signatures or seals to the receipt, the document shall be left at the place where the recipient of the service stays and the service shall be considered completed.

Article 80 If direct service of a litigation document proves to be difficult, service of the document may be entrusted to another people's court, or it may be served by post. If a document is served by post, the date as marked on the receipt shall be regarded as the date on which the document is

served.

Article 81 If the recipient of the service is in the military, the document shall be forwarded to him or her by the political affairs organ at or above the regimental level in the unit to which he or she belongs.

Article 82 If the recipient of the service is undergoing imprisonment, the document shall be forwarded to him or her by the prison or unit of reform through labor where he or she is serving his or her term.

If the recipient of the service is undergoing rehabilitation through labor, the document shall be forwarded to him or her by the unit supervising his or her rehabilitation through labor.

Article 83 Any organization or unit that receives a litigation document to be forwarded must immediately deliver it to the recipient of the service for a receipt. The date as marked on the receipt shall be regarded as the date on which the document is served.

Article 84 If the whereabouts of a recipient of the service is unknown, or if a document cannot be served by the other methods stipulated by this Section, the document shall be served by public announcement. Sixty days after the date of the public announcement, the document shall be deemed to have been served.

The reasons for service by public announcement and the procedures taken shall be recorded in the case files.

Chapter VIII Conciliation

Article 85 The people's court shall, in handling civil cases, distinguish between right and wrong and conduct conciliation under the principle of voluntariness of the parties and on the basis of evident facts.

Article 86 When a people's court conducts a conciliation, a single judge or a collegial panel may preside, and conciliations shall be conducted locally whenever possible.

When a people's court conducts a conciliation, it may employ simplified methods to notify the parties and witnesses to appear in court.

Article 87 When a people's court conducts a conciliation, it may request the assistance of units or individuals concerned. The requested units or individuals shall assist the people's court in conducting the conciliation.

Article 88 A conciliation agreement must be based on voluntariness of both parties, and shall not be reached through compulsion. The content of the conciliation agreement may not violate the provisions of the law.

Article 89 When a conciliation agreement is reached, the people's court shall draw up a conciliation statement. A conciliation statement shall clearly set forth the claims of the action, the

facts about the case, and the result of the conciliation.

The conciliation statement shall be signed by the judge and the court clerk, affixed a seal of the people's court, and served to both parties.

Once the conciliation statement is received and signed by both parties, it shall become legally effective.

Article 90 The people's court need not draw up a conciliation statement for the following cases when an agreement is reached through conciliation:

- (1) cases of divorce in which both parties have become reconciled after conciliation;
- (2) cases in which adoptive relationship has been maintained through conciliation;
- (3) cases in which the claims can be immediately satisfied; and
- (4) other cases that do not require conciliation statements.

Any agreement that does not require a conciliation statement shall be entered into the written record and shall become legally effective after being signed or sealed by both parties, the judge and the court clerk.

Article 91 If no agreement is reached through conciliation or if one party retracts before the conciliation statement is served, the people's court shall render a judgment without delay.

Chapter IX Property Preservation and Preliminary Execution

Article 92 If it becomes impossible or difficult to execute a judgment because of the acts of one of the parties or for other reasons, the people's court may, at the request of the other party, order that property preservation be adopted. In the absence of such request, the people's court may, when necessary, also order to adopt property preservation measures.

When a people's court has decided to adopt property preservation, it may instruct the applicant to provide a security; if the applicant fails to do so, his or her application shall be rejected.

After receiving a party's application, if the case is urgent, the people's court must make an order within 48 hours concerning property preservation; if property preservation is granted by an order, implementation thereof shall begin immediately.

Article 93 Any interested party whose lawful rights and interests, due to urgent circumstances, would suffer unremediable harms without immediately applying for property preservation, may, before filing the lawsuit, apply to the people's court for the adoption of property preservation measures. The applicant shall provide a security; if the applicant fails to do so, his or her application shall be rejected.

After receiving a party's application, the people's court must make an order within 48 hours concerning property preservation; if property preservation is granted by an order, the implementation thereof shall begin immediately. If the applicant fails to bring an action within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

Article 94 Property preservation shall be limited to the scope of the claim or to the property relevant to the case.

Property preservation shall be carried out by sealing up, distraining, freezing or other methods as prescribed by law.

After the people's court freezes a property, it shall notify the person against whom the application is made.

Property that has already been sealed up or frozen shall not be sealed up or frozen again.

Article 95 If the applicant against whom the application is made provides a security, the people's court shall cancel the property preservation.

Article 96 If the application is wrongfully made, the applicant shall compensate the person against whom the application is made for any loss incurred from property preservation.

Article 97 The people's court may, at the request of the parties, order preliminary execution in respect to the following cases:

- (1) those involving claims for alimony, support for children or elders, pension for the disabled or the family of a decedent, or expenses for medical care;
- (2) those involving claims for remuneration for labor; and
- (3) those involving urgent circumstances that require preliminary execution.

Article 98 Cases in which preliminary execution is ordered by the people's court shall meet the following conditions:

- (1) the relationship of rights and obligations between the parties is definite, and denial of preliminary execution would seriously affect the life or business of the applicant; and
- (2) the person against whom the application is made is capable of fulfilling the obligations.

The people's court may instruct the applicant to provide a security, if the applicant fails to do so, his or her application shall be rejected. If the applicant loses the lawsuit, he or she shall compensate the person against whom the application is made for any loss of property incurred from the preliminary execution.

Article 99 If a party is not satisfied with the order on property preservation or preliminary execution, it may apply for reconsideration which could be granted only once. Implementation of the order shall not be suspended during the time of reconsideration.

Chapter X Compulsory Measures against Impairment of Civil Actions

Article 100 If a defendant is required to appear in court, but still refuses to appear in court without justified reason after having been served twice with subpoena, the people's court may summon him or her to court by a warrant.

Article 101 Participants in proceedings and other persons shall abide by the court rules.

Should any person violate the court rules, the people's court may reprimand him or her or order him or her to leave the court, or impose a fine or detention on him or her.

With respect to any person who seriously disrupts the court procedure by making an uproar in the court or assaulting the courtroom, or insulting, slandering, threatening, or beating the judicial

personnel, criminal responsibility shall be investigated according to law; if the circumstances are minor, a fine or detention may be imposed thereon.

Article 102 If a participant in the proceedings or any other person commits any of the following acts, the people's court may, in the light of the seriousness of the circumstances, impose a fine or detention thereon; if a crime is constituted, criminal responsibility shall be investigated according to law:

- (1) forging or destroying significant evidence, which would obstruct the trial of a case by the people's court;
 - (2) resorting to violence, threats or subornation to hinder a witness from giving testimony, or instigating, suborning, or coercing others to give false testimony;
 - (3) concealing, transferring, selling or destroying property that has been sealed up or distrained, or that has been made an inventory of and has been put under his or her care according to instruction, or transferring the property that has been frozen;
 - (4) insulting, slandering, incriminating with false charges, beating up or retaliating against judicial personnel, participants in proceedings, witnesses, interpreters, experts, inspectors or persons assisting in execution;
 - (5) using violence, threats or other means to hinder judicial personnel from performing their duties;
- or
- (6) refusing to comply with the legally effective judgments or orders made by the people's court.

If a unit has any of the acts mentioned in the preceding paragraph, the people's court may impose a fine or detention on its principal person in charge or persons directly held responsible; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 103 With respect to a unit under an obligation to assist in investigation and execution that commits any of the following acts, the people's court may, apart from instructing it to perform its obligation to assist, also impose a fine:

- (1) refusing or obstructing, by units concerned, investigations and collection of evidence by the people's court;
- (2) after receiving a notification on assistance in execution from the people's court, refusing by banks, credit cooperatives or other units operating service of savings deposits to assist in inquiring, freezing or transferring relevant deposit.
- (3) after receiving a notification on assistance in execution from the people's court, refusing by units concerned to assist in withholding the income of the party subject to execution, handling formalities for transferring relevant certificates and passing on relevant negotiable instrument, certificates, or other property; or
- (4) refusing to provide other obligatory assistance in execution.

With respect to a unit that commits any of the acts specified in the preceding paragraph, the people's court may impose a fine on the principal person in charge of the unit or the person held directly responsible; the people's court may also put forward a proposal on the imposition of disciplinary penalty to the supervisory organ and organs concerned.

Article 104 A fine on an individual shall not exceed 1,000 Renminbi yuan. A fine on a unit shall exceed 1,000 Renminbi yuan and not exceed 30,000 Renminbi yuan.

A detention period shall not exceed 15 days.

The people's court shall deliver detained persons to a public security organ for custody. The people's court may decide to grant the detained person an early release if he or her admits and corrects his or her wrongdoing.

Article 105 Imposition of summons by warrant, fine or detention shall be subject to approval of the president of a people's court.

Warrant shall be issued for carrying out summons by warrant.

Letters of decision shall be issued for fines and detentions. If an offender is not satisfied with the decision, he or her may apply to a people's court at a higher level for reconsideration that could be granted only once. The execution of the decision shall not be suspended during the time of reconsideration.

Article 106 Decision on the adoption of compulsory measures against impairment of civil actions must be made by the people's court. Any unit or individual that extorts a debt by illegitimate detention of a person or illegal distraint of a property shall be investigated for criminal responsibility according to law, or shall be punished with a detention or fine.

Chapter XI Litigation Costs

Article 107 Any party filing a civil lawsuit shall pay a case acceptance fee in accordance with relevant regulations. With respect to cases concerning property, the party shall pay other litigation costs, in addition to case acceptance fee.

Parties that have true difficulty in paying litigation costs may, in accordance with relevant regulations, apply to the people's court for suspension or reduction of or exemption from the payment.

Measures for the charging and collecting of litigation costs shall be formulated separately.

Chapter XII Ordinary Procedure of First Instance

Section 1 Initiating An Action and Accepting a Case

Article 108 The following requirements must be met when an action is initiated:

- (1) the plaintiff must be an individual, legal person or any other organization that has a direct interest in the case;
- (2) there must be a specific defendant;
- (3) there must be a concrete claim, facts and cause of action; and
- (4) the action must be within the scope of acceptance for civil lawsuits of the people's courts and within the jurisdiction of the people's court where it is filed.

Article 109 When initiating an action, a bill of complaint shall be submitted to the people's court, and copies of the bill shall be prepared according to the number of defendants.

If a plaintiff has true difficulty in writing a bill of complaint, he or she may lodge his or her complaint orally, and the court shall transcribe it into written records and inform the other party.

Article 110 A bill of complaint shall clearly set forth the following matters:

- (1) the name, sex, age, nationality, occupation, employer and address of the party, or the name, address and name and position of the legal representative or principal person in charge of the legal person or other organization;
- (2) the claim of the lawsuit and the facts and grounds on which the lawsuit is based; and
- (3) evidence and its sources, as well as the names and addresses of witnesses.

Article 111 The people's court must accept the lawsuits filed in conformity with the provisions of Article 108 of this Law; with respect to lawsuits described below, the people's court shall handle them according to their specific circumstances:

- (1) with respect to those within the scope of acceptance for administrative lawsuits in accordance with the provisions of the Administrative Procedure Law, the people's court shall notify the plaintiff to institute an administrative lawsuit;
- (2) according to legal provisions, if both parties have on voluntary basis reached a written agreement on arbitration concerning contract disputes that they shall apply to an arbitration agency for arbitration, and may not institute legal proceedings in a people's court, the people's court shall notify the plaintiff to apply to an arbitration agency for arbitration;
- (3) with respect to disputes which, according to law, should be handled by other organs, the people's court shall notify the plaintiff to apply to the relevant organ for settlement;
- (4) with respect to cases that are not under its jurisdiction, the people's court shall notify the plaintiff to bring a lawsuit in the competent people's court;
- (5) with respect to cases in which a judgment or order has already taken legal effect, but one party again brings a suit, the people's court shall notify that party to file an appeal instead, with the exception of those cases in which an order is rendered by the people's court allowing the withdrawal of an action;
- (6) if cases that are not permitted by law to be filed within a specified period are filed during the same period, they shall not be accepted; and
- (7) if a case of divorce in which a judgment has been made not granting the divorce, or in which both parties have become reconciled after conciliation, or in which the plaintiff has withdrawn the suit, or any suit concerning adoptive relationship in which a judgment has been made or conciliation conducted to maintain the adoptive relationship is refilled within six months without new development and reasons, it shall not be accepted.

Article 112 When a people's court receives a bill of complaint or an oral complaint and finds after review that it meets the requirements for acceptance, it shall file the case within seven days and notify the parties; if the complaint does not meet the requirements for acceptance, the court shall, within seven days, order that the complaint be rejected. If the complainant has an objection against the order, he or she may file an appeal.

Section 2 Preparations for Trial

Article 113 The people's court shall send a copy of the bill of complaint to the defendant within five days from its filing of the case, and the defendant shall submit a bill of defense within 15 days

from the receipt of the copy of the bill of complaint.

If the defendant submits a bill of defense, the people's court shall send a copy of the bill of defense to the plaintiff within five days from its receipt. Failure by the defendant to submit a bill of defense shall not prevent the case from being heard by the people's court.

Article 114 The people's court shall, in relation to cases whose acceptance has been decided, notify the parties orally or in the notification on case acceptance or in notification on response to prosecution, of their relevant litigation rights and obligations.

Article 115 The parties shall be notified within three days after members of the collegial panel are decided.

Article 116 The judicial personnel must carefully examine the case materials and carry out investigation and collection of necessary evidence.

Article 117 Any person sent by a people's court to conduct an investigation shall first present his or her credentials to the person being investigated.
The written record of an investigation shall be checked by the person investigated and then signed or sealed by both the investigator and the investigated.

Article 118 A people's court may, when necessary, entrust a people's court in another locality with an investigation.

The entrusting people's court shall clearly set out the matters and requirements of the entrusted investigation. The entrusted people's court may, on its own initiative, conduct supplementary investigation.

The entrusted people's court shall complete the investigation within 30 days after receiving the letter of entrustment. If for some reason it cannot complete the investigation, it shall notify the entrusting people's court in writing within the above-mentioned time limit.

Article 119 If a party who must participate in a joint lawsuit fails to participate in the proceedings, the people's court shall notify it to participate.

Section 3 Trial in Court

Article 120 Civil cases in a people's court shall be heard in public, except for those that involve State secrets or personal privacy of individuals or otherwise provided for by law.

A divorce case or a case involving trade secrets may not be heard in public if the party so requests.

Article 121 In handling civil cases, the people's courts shall, whenever necessary and possible, send out circuit tribunals to hold trials on the spot.

Article 122 The people's court shall notify the parties and other participants in civil case three days before the opening of a court session. If a case is to be heard in public, the names of the parties, the cause of action and the time and

location of the court session shall be made known to the public.

Article 123 Before a court session is called to order, the court clerk shall ascertain whether or not the parties and other participants are present and announce the rules of order of the court. At the beginning of a trial, the presiding judge shall check to make sure the parties are present, announce the cause of action and the names of the judicial personnel and court clerks, inform the parties of their relevant litigation rights and obligations and ask the parties whether or not they wish to apply for the withdrawal of any court personnel.

Article 124 Courtroom investigation shall be conducted in the following order:

- (1) presentation of statements by the parties;
- (2) informing the witnesses of their rights and obligations, giving testimony by the witnesses and reading out the statements of absent witnesses;
- (3) presentation of documentary evidence, material evidence and audio-video material;
- (4) reading out the expert conclusions; and
- (5) reading out the records of inquests.

Article 125 The parties may present new evidence during a court session.

With the permission of the court, the parties may put questions to witnesses, expert witnesses and inspectors.

The parties may request a new investigation expert evaluation or inquest, the people court shall decide whether or not to approve such a request.

Article 126 Additional claims by the plaintiff, counterclaims by the defendant and claims by a third party related to the case may be tried together.

Article 127 Court debates shall be conducted in the following order:

- (1) presentation of statements by the plaintiff and his or her agents ad litem;
- (2) response by the defendant and his or her agents ad litem;
- (3) presentation of statements or defense by the third party and its agents ad litem;
- (4) debate between among them.

At the end of the court debate, the presiding judge shall ask each side to present his or her final arguments, in the order of the plaintiff, the defendant and then the third party.

Article 128 At the conclusion of the court debate, a judgment shall be made according to law. Where conciliation is possible prior to rendering a judgment, conciliation effort may be conducted; if conciliation fails, a judgment shall be made without delay.

Article 129 If a plaintiff has been served with a legal subpoena and refuses to appear in court without justified reason, or if he or she walks out during a court session without the permission of the court, the court may consider the plaintiff has applied to withdraw his or her complaint; if the defendant files a counterclaim, the court may make a judgment by default.

Article 130 If a defendant has been served with a legal subpoena and refuses to appear in court

without justified reason, or if he or she walks out during a court session without the permission of the court, the court may make a judgment by default.

Article 131 If a plaintiff applies to withdraw his or her complaints before judgment is pronounced, the people's court shall make an order regarding whether to grant approval.

If the withdrawal of complaints is denied by an order, and the plaintiff, after having been served with a subpoena, refuses to appear in court without justified reason, the people's court may make a judgment by default.

Article 132 Under any of the following circumstances, court session may be postponed:

(1) the parties or other participants in the proceedings required to appear in court fail to do so for justified reasons;

(2) a party requests the withdrawal only presently;

(3) if it is necessary to summon new witnesses to court, collect new evidence, make a new expert evaluation, hold another inquest, or make supplementary investigation; or

(4) other circumstances that warrant the postponement.

Article 133 The court clerk shall make a written record of the entire court proceedings, which shall be signed by the judicial personnel and the court clerk.

The court record shall be read out in court, or the parties and other participants in the proceedings may be notified to read the record while in court or within five days. If the parties or other participants in the proceedings consider that there are omissions or errors in the record of their statements, they shall have the right to apply for additions or corrections. If such additions or corrections are not permitted, the application shall be written into the case file.

The court record shall be signed or sealed by the parties and other participants in the proceedings. Refusal to do so shall be recorded in a note to be attached to the file.

Article 134 The people's court shall publicly pronounce its judgment in all case, whether or not heard in public.

If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days; if a judgment is pronounced later on a fixed date, the written judgment shall be issued immediately after the pronouncement.

Upon pronouncement of a judgment, the parties must be informed of their right to file an appeal, the time limit for appeal and the court to which they may appeal.

Upon pronouncement of a divorce judgment, the parties must be informed not to remarry before the judgment takes legal effect.

Article 135 A people's court shall, in handling a case to which ordinary procedure is applied, close it within six months from filing the case. Where an extension is necessary for special circumstances, a six-month extension may be given subject to the approval of the president of the said court; any further extension shall be reported to the people's court at a higher level for approval.

Section 4 Suspension and Termination of an Action

Article 136 Under any of the following circumstances, an action shall be suspended:

- (1) one of the parties dies and it is necessary to wait for his or her heir to make clear whether he or she would participate in the proceedings;
- (2) one of the parties has lost the capacity for action and his or her statutory representative has not been designated yet;
- (3) the legal person or any other organization as one of the parties has terminated, and the person succeeding to its rights and obligations has not been determined yet;
- (4) one of the parties is unable to participate in the proceedings for reasons of force majeure;
- (5) the current case is dependent on the results of the trial of another case that has not yet been concluded; or
- (6) other circumstances that warrant the suspension of the lawsuit.

The proceedings shall resume after the causes of the suspension have been eliminated.

Article 137 Under any of the circumstances, an action shall be terminated:

- (1) the plaintiff dies without an heir, or the heir waives his or her right of litigation;
- (2) the defendant dies without estate nor a person who should succeed to his or her obligations;
- (3) one of the parties in a divorce case dies; or
- (4) one of the parties in a case involving claims for overdue alimony, support for children or elders or a claim for the termination of adoptive relationship dies.

Section 5 Judgment and Order

Article 138 A judgment shall clearly state:

- (1) the cause of action, the claims, and the facts of and reasons for the dispute;
- (2) the facts and reasons on which the judgment is based and the law is applied;
- (3) the result of the judgment and the litigation costs to be borne; and
- (4) the time limit for filing an appeal and the court with which the appeal may be filed.

A judgment shall be signed by the judicial personnel and the court clerk, and the seal of the people's court shall be affixed to it.

Article 139 If some of the facts in a case being tried by the people's court are already evident, the court may pass judgment on those facts first.

Article 140 Orders shall be applicable to the following:

- (1) rejection of a lawsuit;
- (2) objection to the jurisdiction of a court;
- (3) rejection of a complaint;
- (4) property preservation and preliminary execution;
- (5) approval or disapproval of withdrawal of a lawsuit;
- (6) suspension or termination of a lawsuit;
- (7) correction of slips of pen in the judgment;
- (8) suspension or termination of execution;
- (9) cancellation of or refusal to enforce an arbitral award;

(10) refusal to enforce a document on creditor's rights which has been rendered by the notary office; and

(11) other matters to be decided by an order.

An appeal may be lodged against the order specified Items (1), (2) and (3) of the preceding paragraph.

A written order shall be signed by the judicial personnel and the court clerk, and the seal of the people's court shall be affixed to it. If an order is issued orally, it shall be entered in the record.

Article 141 All judgments and orders of the Supreme People's Court, as well as judgments and orders that may not be appealed against according to law or have not been appealed against within the prescribed time limit, shall be legally effective.

Chapter XIII Summary Procedure

Article 142 When trying simple civil cases in which the facts are evident, relationship of rights and obligations is definite, and disputes are minor, the grassroots people's courts and the tribunals dispatched by them may apply the summary procedure stipulated in his Chapter.

Article 143 In simple civil cases, the plaintiff may lodge his or her complaint orally.

The two parties may appear at the same time at a grassroots people's court or a tribunal dispatched by it to request a settlement of their dispute. The grassroots people's court or the tribunal dispatched by it may try the case immediately or set a date for the trial.

Article 144 In trying a simple civil case, the grassroots people's court or the tribunal dispatched by it may, at any time, apply simplified methods to summon the parties and witnesses.

Article 145 Simple civil cases shall be tried by a single judge alone, and shall not be restricted by the provisions of Articles 122, 124 and 127 of this Law.

Article 146 The people's court shall, in handling a case to which summary procedure is applied, close it within three months from filing the case.

Chapter XIV Procedure of Second Instance

Article 147 If a party refuses to accept the judgment of first instance of a local people's court, the party shall have the right to file an appeal with the people's court at the next higher level within 15 days from the date on which the written judgment is served.

If a party refuses to accept an order of first instance of a local people's court, the party shall have the right to file an appeal with a people's court at the next higher level within 10 days from the date on which the written order is served.

Article 148 In filing an appeal, an appeal petition shall be submitted. An appeal petition shall include the names of the parties, the names of the legal persons and their legal representatives or names of other organizations and their principal person in charge; the name of the people's court

where the case was originally tried, the serial number of the case file and the cause of action and the claims of the appeal and reasons for it.

Article 149 An appeal petition shall be submitted through the people's court which originally tried the case, and copies of the petition shall be prepared according to the number of people in the other party or the representatives thereof.

If a party appeals directly to a people's court of second instance, the court shall, within five days, transfer the appeal petition to the people's court which originally tried the case.

Article 150 Within five days after receiving an appeal petition, the people's court which originally tried the case shall serve copies of the appeal petition on the other party; After receiving the copies of the appeal petition, the other party shall submit its defense within 15 days. The people's court shall, within five days from receiving the defense, serve copies of the defense on the appellant. Failure by the other party to submit a defense shall not prevent the case from being tried by the people's court.

After receiving the appeal petition and the defense, the people's court which originally tried the case shall, within five days, deliver them together with the entire case file and evidence to the people's court of second instance.

Article 151 With respect to an appealed case, the people's court of second instance shall review the relevant facts and the application of the law.

Article 152 When handling an appealed case, the people's court of second instance shall form a collegial panel and conduct a hearing. Having verified the facts of the case by consulting the files, making necessary investigations and questioning the parties, if the collegial panel considers that it is not necessary to hold a hearing, it may make a judgment or order without a hearing.

A people's court of second instance may try an appealed case in its own court or in the place where the case originated or where the people's court which originally tried the case is located.

Article 153 After hearing an appealed case, the people's court of second instance shall handle it respectively according to the following conditions:

- (1) if the facts were clearly ascertained and the law was correctly applied in the original judgment, the appeal shall be rejected and the original judgment shall be sustained;
- (2) if the law was incorrectly applied in the original judgment, the judgment shall be amended according to law;
- (3) if in the original judgment the facts were incorrectly ascertained or were not clearly ascertained and the evidence was inconclusive, the judgment shall be rescinded and the case remanded by an order to the original people's court for retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or
- (4) if in the original judgment a violation of the prescribed procedure may have affected the correctness of the judgment, the judgment shall be rescinded and the case remanded by an order to the original people's court for retrial.

The parties may appeal against the judgment or order rendered in a retrial of their case.

Article 154 A people's court of second instance shall use orders in all cases of appeal against the orders made by the people's court of first instance.

Article 155 In handling an appealed case, a people's court of second instance may conduct conciliation. If an agreement is reached through conciliation, a conciliation statement shall be made and signed by the judicial personnel and the court clerk, and the seal of the people's court shall be affixed to it. After the conciliation statement has been served, the judgment of the people's court which originally tried the case shall be considered rescinded.

Article 156 If an appellant requests to withdraw his or her appeal before a people's court of second instance pronounces its judgment, the court shall decide whether or not approve the request.

Article 157 When a people's court of second instance handles an appealed case, it shall apply the ordinary procedure for trials of first instance, in addition to applying the provisions of this Chapter.

Article 158 The judgments and orders of a people's court of second instance shall be final.

Article 159 In trying an appealed case against a judgment, the people's court shall make a final judgment within three months after the case was filed as one of second instance. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the said court.

In trying an appealed case against an order, the people's court shall make a final order within 30 days after the case was filed as one of second instance.

Chapter XV Special Procedure

Section 1 General Stipulations

Article 160 When a people's court handles cases concerning the credentials of voters, the proclamation of a person as missing or dead, the determination of a citizen as incompetent or with limited capacity for civil conduct and the determination of a property as ownerless, the provisions of this Chapter shall apply. In absence of such provisions in this Chapter, the relevant provisions of this Law and other laws shall apply.

Article 161 With respect to a case tried in accordance with the procedure stipulated in this Chapter, the judgment of first instance shall be final. A collegial panel of judges shall be formed for the trial of any case involving the credentials of voters or any major, difficult or complicated case; other cases shall be tried by a single judge alone.

Article 162 If a people's court, while trying a case in accordance with the procedure stipulated in this Chapter, discovers that the case involves a dispute over rights and interests in civil affairs, it shall make an order to terminate the special procedure and inform the interested parties to initiate another suit.

Article 163 The people's court shall, in trying cases to which special procedure is applied, close them within 30 days from filing the case or within 30 days from expiration of the term set forth in the public notice. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the said court, however, except cases concerning the credentials of voters.

Section 2 Cases Concerning the Credentials of Voters

Article 164 If a citizen refuse to accept an election committee's decision on an appeal concerning the credentials of the voter, he or she may, five days before the election day, bring a suit in the grassroots people's court located in his or her electoral district.

Article 165 After a people's court has accepted a case concerning the credentials of voters, it must close the case before the election day.

When trying such a case, the prosecutor, a representative of the election committee and other citizens concerned must participate in the proceedings.

The written judgment of the people's court shall be served to the election committee and the prosecutor before the election day, and other citizens concerned shall be notified of the judgment.

Section 3 Cases Concerning the Proclamation of a Person as Missing or Dead

Article 166 With respect to a citizen whose whereabouts have been unknown for two years, if the interested party applies for proclaiming the person as missing, the application shall be filed with the grassroots people's court in the locality where the missing person has his or her domicile. The application shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended.

Article 167 With respect to a citizen whose whereabouts have been unknown for four years or whose whereabouts have been unknown for two years after an accident in which he or she was involved, or whose whereabouts have been unknown after an accident in which he or she was involved and, upon verification by the relevant authorities, the said citizen is unable to survive, if the interested party applies for proclaiming such person as dead, the application shall be filed with the grassroots people's court in the locality where the missing person has his or her domicile.

The application shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of this citizen shall be appended.

Article 168 After accepting a case concerning a proclamation of a person as missing or dead, the people's court shall issue a public search notice for the person whose whereabouts have been unknown. The time limit of the notice on the proclamation of a person as missing shall be three months, and the time limit of the notice on the proclamation of a person as dead shall be one year. Where a citizen's whereabouts have been unknown after an accident in which he or she was

involved and, upon verification by the relevant authorities, the said citizen is unable to survive, the time limit of the notice on the proclamation of such person as dead shall be three months.

On the expiration of the time limit of the public notice, the people's court shall, depending on whether the facts about the missing or death of the person have been confirmed, make a judgment proclaiming the person as missing or dead or make a judgment to reject the application.

Article 169 In case that a person who has been proclaimed as missing or dead by a people's court reappears, the people's court shall, upon the application of that person or an interested party, make a new judgment and annul the previous one.

Section 4 Cases Concerning the Determination of a Citizen as Incompetent or with Limited Capacity for Civil Conduct

Article 170 An application for determining a citizen as incompetent or with limited capacity for civil conduct shall be filed by the citizen's near relatives or any other interested party with the grassroots people's court in the locality where the citizen has his or her domicile.

The application shall clearly state the facts and grounds on which the citizen's incompetence or limited capacity for civil conduct is claimed.

Article 171 After accepting such an application, the people's court shall, when necessary, have an expert evaluation on the citizen whose incompetence or limited capacity for civil conduct is claimed. If the applicant has already provided an evaluation conclusion, the people's court shall examine the conclusion.

Article 172 When the people's court handles a case for determining a citizen as incompetent or with limited capacity for civil conduct, a near relative of the citizen shall be the agent, however, except the applicant. If the near relatives shift the responsibility onto one another, the people's court shall appoint one of them as an agent for the citizen. If the citizen's state of health permits, the people's court shall also solicit opinions from the citizen.

If the people's court is convinced, after trial, that the application is based on facts, it shall make a judgment determining the citizen as incompetent or with limited capacity for civil conduct; if the court finds that the application is not based on facts, it shall make a judgment to reject it.

Article 173 If, upon the application of a person who has been determined as incompetent or with limited capacity for civil conduct or of his or her guardian, the people's court verifies that the causes of that person's incompetence or limited capacity for civil conduct has been eliminated, it shall make a new judgment and annul the previous one.

Section 5 Cases Concerning the Determination of a Property as Ownerless

Article 174 An application for determining a property as ownerless shall be filed by a citizen, legal person or any other organization with the grassroots people's court in the place where the property is located.

The application shall clearly state the type and quantity of the property and the grounds on which

the application for determining the property as ownerless is based.

Article 175 The people's court shall, after accepting such an application and upon examination and verification, issue a public notice for the claim of the property. If no one claims the property within one year from the issue of the public notice, the people's court shall make a judgment determining the property as ownerless and turn it over to the ownership of the State or the collective.

Article 176 If, after a property has been determined by a judgment as ownerless, the owner of the property or his or her heir appears and claims the property, the people's court shall, after examination and verification, make a new judgment and annul the previous one.

Chapter XVI Procedure for Trial Supervision

Article 177 If the president of a people's court at any level finds some definite error in a legally effective judgment or order of his or her court and deems it necessary to have the case retried, he or she shall refer it to the judicial committee for discussion and decision.

If the Supreme People's Court finds some definite error in a legally effective judgment or order of a local people's court at any level, or if a people's court at a higher level finds some definite error in a legally effective judgment or order of a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at a lower level to conduct a retrial.

Article 178 If a party considers that a legally effective judgment or order has some error, the party may apply to the people's court which originally tried the case or to a people's court at the next higher level for retrial, however, execution of the judgment or order shall not be suspended.

Article 179 If an application made by a party involves any of the following circumstances, the people's court shall retry the case:

- (1) new evidence is conclusive enough to repudiate the original judgment or order;
- (2) main evidence on which the facts were ascertained in the original judgment or order was insufficient;
- (3) there was error in the application of the law in the original judgment or order;
- (4) a violation of the legal procedure by a people's court may have affected the correctness of the judgment or order in the case;
- (5) if the judicial personnel committed embezzlement, accepted bribes, practiced favoritism for personal gains and twisted the law in trial of the case.

The people's court shall reject any application that does not meet the conditions specified in the preceding paragraph.

Article 180 With respect to a legally effective conciliation statement, if evidence provided by a party proves that the conciliation violates the principle of voluntariness and the content of the conciliation statement is in violation of the law, the party may apply for a retrial. The people's court shall, upon examination and verification, retry the case.

Article 181 With respect to a legally effective judgment on termination of marriage, no party may apply for a retrial.

Article 182 Any application for a retrial by a party shall be made within two years after the judgment or order becomes legally effective.

Article 183 When a decision is made to retry a case in accordance with the procedure for trial supervision, the execution of the original judgment shall be ordered to be suspended. The order shall be signed by the president of the court, and the seal of the people's court shall be affixed to it.

Article 184 With respect to a case to be retried by a people's court in accordance with the procedure for trial supervision, if the legally effective judgment or order was made by a court of first instance, it shall be handled in accordance with the procedure of first instance, and the parties may appeal against the new judgment or order; if the legally effective judgment or order was made by a court of second instance, it shall be handled in accordance with the procedure of second instance, and the new judgment or order shall be legally effective; if it is a case which was brought up for trial by a people's court at a higher level, it shall be handled in accordance with the procedure of second instance, and the new judgment or order shall be legally effective.

The people's court shall, in retrying a case, form a new collegial panel.

Article 185 If the Supreme People's Procuratorate discovers that a legally effective judgment or order made by a people's court at any level, or if a people's procuratorate at a higher level discovers that a legally effective judgment or order made by a people's court at a lower level, involves any of the following circumstances, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall respectively lodge a protest in accordance with the procedure for trial supervision:

- (1) the main evidence ascertaining the facts in the previous judgment or order was insufficient;
- (2) there was error in the application of the law in the previous judgment or order;
- (3) a violation of the legal procedure by a people's court may have affected the correctness of the judgment or order; or
- (4) if the judicial personnel are found to have committed embezzlement, accepted bribes, practiced favoritism for personal gains and twisted the law in trial of the case.

If a local people's procuratorate at any level discovers that a legally effective judgment or order made by a people's court at the corresponding level involves any of the circumstances specified in the preceding paragraph, it shall refer the matter to the people's procuratorate at a higher level for a protest to be lodged by the latter in accordance with the procedure for trial supervision.

Article 186 Cases protested by the people's procuratorate shall be retried by the people's court.

Article 187 When a people's procuratorate decides to lodge a protest against a judgment or order made by a people's court, it shall produce a written protest.

Article 188 The people's court shall, in retrying a case protested by the people's procuratorate, notify the people's procuratorate to send personnel to the court.

Chapter XVII Summary Procedure for Recovering a Debt

Article 189 When a creditor requests payment of money or negotiable instrument from a debtor, if the following requirements are met, the creditor may apply to the grassroots people's court that has jurisdiction for a payment warrant:

- (1) the creditor and the debtor are not involved in other obligation disputes; and
- (2) the payment warrant can be served on the debtor.

The application shall clearly state the requested amount of money or quantity of negotiable instrument and the facts and evidence on which the request is based.

Article 190 After a creditor has submitted his or her application, the people's court shall, within five days, inform the creditor whether it has accepted his or her application.

Article 191 After accepting the application, the people's court shall, upon examination of the facts and evidence provided by the creditor and if the relationship of the creditor's rights and the debtor's obligations is definite and legitimate, issue a payment warrant to the debtor within 15 days from accepting the application; if the application is untenable, the people's court shall render an order to reject it.

The debtor shall, within 15 days from the receipt of the payment warrant, clear off his or her debts or submit a written objection to the people's court.

If the debtor has neither submitted an objection nor complied with the payment warrant within the time limit specified in the preceding paragraph, the applicant may apply to the people's court for execution.

Article 192 The people's court shall, on receiving the written objection submitted by the debtor, make an order to conclude the summary procedure for recovering a debt and the payment warrant shall be invalidated automatically, the creditor may then initiate an action.

Chapter XVIII Procedure for Public Invitation to Assert Claims

Article 193 Any holder of a bill which may be endorsed over according to regulations may, if the bill is stolen, lost or missing, apply for public invitation to assert claims to the basic people's court in the place where the bill is to be paid. The provisions of this Chapter shall apply to other matters to which, according to legal provisions, public invitation to assert claims may be applicable.

Anyone who applies for public invitation to assert claims shall submit to the people's court an application which shall clearly states the main contents of the bill such as the face amount, the issuer, the holder, the endorser, and the grounds and facts on which the application is based.

Article 194 The people's court shall, upon deciding to accept the application, notify the payer to suspend the payment, and within 3 days issue a public notice to invite the interested parties to assert claims. The time limit of the public notice shall be decided by the people's court according to the actual conditions, however, it shall not be less than 60 days.

Article 195 The payer shall, upon receiving the notification on suspension of payment issued by the people's court, suspend its payment till the conclusion of the procedure for public invitation to assert claims.

Within the time limit of the public notice, any act relating to the transfer of the rights in the bill shall be null and void.

Article 196 The interested parties shall apply to the people's court for asserting claims within the time limit of the public notice.

After receiving an application of the interested party for asserting claims, the people's court shall make an order to conclude the procedure for public invitation to assert claims and notify the applicant and the payer.

The applicant or the claimant may institute a lawsuit in the people's court.

Article 197 If no one asserts claims, the people's court shall make a judgment on the basis of the application to declare the bill null and void. The judgment shall be announced in a public notice, and the payer of the bill shall be notified of the judgment. From the date of the public notice, the applicant shall be entitled to claim payment from the payer.

Article 198 If an interested party for justified reasons was unable to apply to the people's court for asserting claims before the judgment was made, the party may, within one years from the day he knew or should have known of the public notice of the judgment, initiate an action in the people's court which made the judgment.

Chapter XIX Procedure for Debt Repayment after Bankruptcy of Enterprises as Legal Persons

Article 199 If an enterprise as legal person suffers serious losses and is unable to repay the debts that are due, the creditors may apply to a people's court for declaring the debtor's bankruptcy and debt repayment, the debtor may also file at a people's court to declare bankruptcy to repay debts.

Article 200 After rendering an order to declare bankruptcy and debt repayment, the people's court shall notify the debtors and the known creditors within ten days and make a public announcement thereon.

Creditors who have been notified shall, within 30 days after receiving the notice, and creditors who have not been notified shall, within three months after the date of the announcement, report their claims to the people's court. Creditors who do not report their claims during these periods shall be deemed to have abandoned their claims.

Creditors may form an assembly of creditors to discuss and adopt plans on bankrupt property disposition and distribution, or to reach compromise plans.

Article 201 The people's court may set up a liquidation group composed of relevant organs and personnel. The liquidation group shall be responsible for the keeping, putting into order, appraisal, disposition and distribution of the bankruptcy property. The liquidation group may carry out necessary civil actions in accordance with the law.

The liquidation group shall be responsible to, and report its work to, the people's court.

Article 202 Where the meeting of an enterprise as legal person and the creditors reaches a compromise, and upon consent by the people court, the people's court shall issue a public announcement thereof, and conclude the debt repayment procedure. The settlement agreement shall have legal effect from the date of the public announcement.

Article 203 With respect to property that already constitutes security for such obligatory rights as loan from a bank and for other security, the bank and other creditors shall have priority in receiving repayment with respect to such security or other surety. If the value of the security and other surety exceeds the amount of debts that they secure, the portion in excess shall be the bankruptcy repayment property.

Article 204 After the prior deduction of bankruptcy expenses from the bankruptcy property, repayment shall be made in the following order:

- (1) wages for staff and workers and labor insurance expenses that are owed by the bankrupt enterprise;
- (2) taxes that are owed by the bankrupt enterprise; and
- (3) bankruptcy claims.

Where the bankruptcy property is insufficient to repay all the repayment claims of the order, it shall be distributed according to a set percentage.

Article 205 The bankruptcy repayment of an enterprise as legal person shall be under the jurisdiction of the people's court in the place where the enterprise as legal person is located.

Article 206 With respect to the procedure for bankruptcy repayment of enterprises owned by the whole people, the provisions of the Law of the People's Republic of China on Enterprise Bankruptcy shall apply.

With respect to enterprises without legal person status, private industrial and commercial households, rural contracting operation households and individual partnership, the provisions of this Chapter shall not apply.

Chapter XX General Stipulations

Article 207 Legally effective civil judgments or orders as well as the parts of criminal judgments or orders that relate to property shall be executed by the people's court of first instance. Other legal documents which are to be executed by a people's court as prescribed by law shall be executed by the people's court in the place where the person subject to execution has his or her domicile or where the property subject to execution is located.

Article 208 If, in the course of execution, a person who is not involved in the case raises an objection with respect to the subject matter of the execution, the execution officer shall review the objection in accordance with the procedure as prescribed by law. If the objection is untenable, it shall be rejected; if the objection is tenable, it shall be submitted to the president of the court for an approval of the suspension of execution. If any definite error is found in the judgment or order,

it shall be dealt with in accordance with the procedure for trial supervision.

Article 209 The execution shall be carried out by the execution officer. In carrying out a compulsory execution measure, the execution officer shall present his or her credentials. After the execution is completed, the execution officer shall make a record of the particulars of the execution, and have it signed or sealed by the persons concerned on the scene. The grassroots people's court and the intermediate people's court may, in the light of needs, establish execution organs. The duties and functions of the execution organs shall be defined by the Supreme People's Court.

Article 210 Where a person or property subject to execution is in another locality, the people's court in that locality may be entrusted with enforcement of the execution. The entrusted people's court shall begin the execution within 15 days after receiving a letter of entrustment and shall not refuse to do so. After the execution has been completed, the entrusted people's court shall promptly inform the entrusting people's court, by letter, of the result of the execution; if the execution has not been completed within 30 days, the entrusted people's court shall also inform the entrusting people's court, by letter, of the particulars of the execution. If the entrusted people's court fails to enforce the execution within 15 days after receiving the letter of entrustment, the entrusting people's court may request the people's court at a higher level of the entrusted people's court to instruct the entrusted people's court to enforce the execution.

Article 211 If, in the course of execution, the two parties resort to reconciliation on their own initiative and reach a compromise, the execution officer shall make a record of the terms of the compromise, and both parties shall affix their signatures or seals to it. If one party fails to fulfill the conciliation agreement, the people's court may, at the request of the other party, resume the execution of the legal document which is formerly effective.

Article 212 In the course of execution, if the person subject to execution provides a security, the people's court may, with the consent of the person who has applied for execution, decide to suspend the execution and to defer the time limit for execution. If the person subject to execution fails again to enforce the execution within the new time limit, the people's court shall have the power to execute the guaranteed property of the person subject to execution or the property of the guarantor.

Article 213 If the citizen subject to execution dies, his or her debts shall be paid off from his or her estate; if a legal person or any other organization as the party subject to execution terminates, the party that succeeds to its rights and obligations shall fulfill the obligations.

Article 214 After the execution has been enforced in accordance with a judgment or order or other legal documents, if definite error has been found in such judgment, order or legal document and therefore it has been revoked by the people's court, the people's court shall, with respect to the property which has been executed, render an order that persons who have obtained the property should return it. In the event of refusal to return the property, compulsory execution shall be enforced.

Article 215 The provisions of this Part shall be applicable to the execution of conciliation statements made by the people's court.

Chapter XXI Application for and Referral of Execution

Article 216 The parties must comply with legally effective civil judgments or orders. If a party refuses to execute, the other party may apply to the people's court for execution, or the judge may refer the matter to the execution officer for execution. The parties must comply with the conciliation statements and other legal documents that are to be executed by the people's court. If a party refuses to execute, the other party may apply to the people's court for execution.

Article 217 If a party fails to comply with a legally effective arbitral award made by an arbitration agency established according to law, the other party may apply for execution to the people's court which has jurisdiction over the case. The people's court so applied to shall execute the said award. Where the party against whom the application is made provides evidence which proves that the arbitral award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order to cancel the arbitral award:

- (1) the parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement on arbitration;
- (2) matters decided exceed the scope of the arbitration agreement or the limits of authority of the arbitration agency;
- (3) the composition of the arbitration tribunal or the procedure for arbitration is not in conformity with the legal procedure;
- (4) the main evidence for ascertaining the facts is insufficient;
- (5) there is definite error in the application of the law; or
- (6) if the arbitrators have committed embezzlement, accepted bribes, practiced favoritism for personal gains or perverted the law in the arbitration of the case.

If the people's court determines that the execution of the arbitral award would contradict the social and public interest, the people's court shall order to not to execute the award.

The order shall be served on both parties and the arbitration agency.

In the event that an arbitral award is ruled not to be executed by a people's court, the parties may, in accordance with the written agreement on arbitration reached between the two parties, apply to the arbitration agency for arbitration anew and may also bring a lawsuit in the people's court.

Article 218 If a party fails to comply with a document of creditor's rights that has been rendered according to law by a notary office, the other party may apply to the people's court which has jurisdiction over the case for execution. The people's court so applied to shall execute such document.

If the people's court finds some definite errors in the notarized document of creditor's rights, it shall order not to execute it and serve the order on both parties as well as the notary office.

Article 219 The time limit for the submission of an application for execution shall be one year if one or both of the parties are citizens; it shall be six months if both parties are legal persons or

other organizations.

The above-mentioned time limit shall be calculated from the last day of the period specified by the legal document for its performance; if the legal document specifies that it shall be performed in stages, the time limit shall be calculated from the last day of the period specified for each stage of performance.

Article 220 The execution officer shall, after receiving the application for execution or the writ of referral of execution, send a notification on execution to the person subject to execution, instructing him or her to execute within the specified time limit, if the person fails to perform the execution within the time limit, compulsory execution shall be enforced.

Chapter XXII Execution Measures

Article 221 If the person subject to execution fails to fulfill the obligations specified in the legal document as instructed by the notice on execution, the people's court shall have the power to make inquiries to banks, credit cooperatives or other units that operate savings deposits business about the savings deposits of the person subject to execution, and shall have the power to freeze and transfer the savings deposits of the person subject to execution, however, the inquiry, freezing or transfer of the deposits shall not exceed the scope obligations within which the person subject to execution should fulfill.

The people's court shall, in deciding to freeze or transfer a deposit, pass an order and issue a notice on assistance in execution. Banks, credit cooperatives or other units that operate savings deposits business must comply with the notice.

Article 222 If the person subject to execution fails to fulfill the obligations specified in the legal documents as instructed by the notice on execution, the people's court shall have the power to withhold or withdraw the income of the person subject to execution within the scope of the obligation that the person subject to execution should fulfill, however, the necessary living expenses for the person and his or her dependent family members shall be reserved.

The people's court shall, when withholding or withdrawing the income, pass an order and issue a notice on assistance in execution. The unit in which the person subject to execution works, or banks, credit cooperatives or other units that operate savings deposits business must comply with the notice.

Article 223 If the person subject to execution fails to fulfill the obligation specified in the legal document as instructed by the notice on execution, the people's court shall have the power to seal up, distraint, freeze, or sell off the property of the person subject to execution at reduced or the current price within the scope of the obligations that the person subject to execution should fulfill, however, it shall leave the articles of daily necessity for the person and his or her dependent family members.

The people's court shall render an order regarding the adoption of the measures specified in the preceding paragraph.

Article 224 When the people's court seals up or distrains a property, if the person subject to

execution is a citizen, it shall notify the person and an adult member of his or her family to appear on the scene; if the person subject to execution is a legal person or any other organization, it shall notify its legal representatives or principal person in charge to appear on the scene. Their refusal to appear in the scene shall not affect the execution. If the person subject to execution is a citizen, his or her unit or the grassroots organization in the place where his or her property is located shall send people to participate. An inventory of the sealed-up or distrained property must be made by the execution officer and, after the inventory has been signed or sealed by the persons on the scene, a copy of it shall be given to the person subject to execution or, if the person subject to execution is a citizen, it may also be given to an adult member of his or her family.

Article 225 The execution officer may assign the responsibility of safekeeping the sealed-up property to the person subject to execution, and the person shall be held responsible for any losses incurred due to his or her fault.

Article 226 After a property has been sealed up or distrained, the execution officer shall instruct the person subject to execution to fulfill, within the prescribed time limit, the obligations specified in the legal document. If the person fails to fulfill his or her obligations within the prescribed time limit, the people's court may, in accordance with relevant regulations, entrust the relevant units with the selling of the sealed-up or distrained property at reduced or the current price. Articles which are prohibited from free trading by the State shall be delivered to and purchased by the relevant units at the price fixed by the State.

Article 227 If the person subject to execution fails to fulfill the obligations specified in the legal document and conceals his or her property, the people's court shall have the power to issue a search warrant and carry out a search on the person subject to execution and in his or her domicile or in the place where the property is concealed. The adoption of the measures mentioned in the preceding paragraph shall be subject to a search warrant signed by the president of the people's court.

Article 228 The property or negotiable instrument specified for delivery in the legal document shall be delivered, in the presence of both parties summoned by the execution officer, to the recipient, or be forwarded by the execution officer to the recipient who shall sign a receipt. Any unit concerned that holds the property or negotiable instrument shall pass it on, in accordance with the notice on assistance in execution of the people's court, and the recipient shall sign a receipt. If any citizen concerned holds the property or negotiable instrument, the people's court shall notify him or her to relinquish them, if he or she refuses to do so, compulsory execution shall be enforced.

Article 229 Compulsory departure from a building or a plot of land shall require a public notice signed and issued by the president of a people's court, instructing the person subject to execution to perform it within a designated period of time. If the person fails to do so within the given time, compulsory execution shall be enforced by the execution officer. When a compulsory execution is being enforced, if the person subject to execution is a citizen, the person or an adult member of his or her family shall be notified to be present; if the person subject to execution is a legal person or

any other organization, its legal representatives or principal person in charge shall be notified to be present. Their refusal to be present shall not affect the execution. If the person subject to execution is a citizen, his or her work unit or the grassroots organization in the locality of the building or the plot of land in question shall send people to participate. The execution officer shall make a record of the particulars of the compulsory execution, and the people on the scene shall affix their signatures or seals to the record. The people's court shall assign personnel to transport the property involved in a compulsory departure from a building to a designated location and deliver it to the person subject to execution or to an adult member of his or her family; if any loss is incurred due to the person's refusal to accept the property, he or she shall be held responsible for it.

Article 230 In the course of execution, if some formalities for certificates transfer need to be gone through, the people's court may issue a notice for assistance in execution to relevant units, which must comply with the notice.

Article 231 If the person subject to execution fails to fulfill the performance required of him or her by a judgment or order or any other legal document as instructed by the notice on execution, the people's court may enforce compulsory execution or entrust the performance to a relevant unit or other persons, and the person subject to execution shall bear the expenses thus incurred.

Article 232 If the person subject to execution fails to fulfill his or her obligations in respect to payment of money within the time limit specified by a judgment or order or any other legal document, he or she shall pay a multiplied interest on the debt for the period of deferred fulfillment. If the person subject to execution fails to fulfill his or her other obligations within the time limit specified by a judgment or order or any other legal document, he or she shall pay a surcharge for the deferred fulfillment.

Article 233 After the adoption of the execution measures stipulated in Article 221, 222 and 223 of this Law, if the person subject to execution is still unable to repay his or her debts, it shall continue to fulfill his or her obligations. Once the creditor discovers that the person subject to execution has any other property, the creditor may, at any time, apply to the people's court for execution.

Chapter XXIII Suspension and Conclusion of Execution

Article 234 Under any of the following circumstances, the people's court shall order a suspension of execution:

- (1) the applicant indicates that the execution may be postponed;
 - (2) a person not involved in the case raises a justified objection to the subject matter of the execution;
 - (3) a citizen as one of the parties dies and it is necessary to wait for his or her heir to succeed the rights and obligations of the deceased;
 - (4) a legal person or any other organization as one of the parties terminates, and the person succeeding to its rights and obligations has not been determined; or
 - (5) other circumstances under which the people's court deems the execution should be suspended.
- Execution shall be resumed when the circumstances which caused the suspension of execution

have disappeared.

Article 235 Under any of the following circumstances, the people's court shall order the conclusion of an execution:

- (1) the applicant has withdrawn his or her application;
- (2) the legal document on which the execution is based has been repealed;
- (3) the citizen subject to execution dies and there is no estate to be executed and no one to succeed to his or her obligations;
- (4) the person entitled to claim alimony or support for children or elders dies;
- (5) the citizen subject to execution has difficulty to repay his or her debts, has no source of income and loses his or her ability to work as well; or
- (6) other circumstances under which the people's court deems the execution should be terminated.

Article 236 An order to suspend or terminate an execution shall become effective immediately after being served on the parties.

Part Four Special Stipulations on Civil Procedures Involving Foreign Interests

Chapter XXIV General Principles

Article 237 The provisions of this Part shall be applicable to any civil lawsuit involving foreign interests within the territory of the People's Republic of China. Where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply.

Article 238 If an international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those of this Law, the provisions of the international treaty shall apply, unless the provisions are the ones on which China has announced reservations.

Article 239 Any civil lawsuits brought against a foreign national, a foreign organization or an international organization that enjoys diplomatic privileges and immunities shall be dealt with in accordance with the relevant laws of the People's Republic of China and with the international treaties concluded or acceded to by the People's Republic of China.

Article 240 In trying civil cases involving foreign interests, the people's court shall use the spoken and written languages commonly used in the People's Republic of China. Translation may be provided at the request of the parties, and the expenses shall be borne by the parties.

Article 241 When foreign nationals, stateless persons or foreign enterprises or organizations need to appoint lawyers as agents ad litem to institute or respond to prosecutions in the people's court, they must appoint lawyers of the People's Republic of China.

Article 242 Any power of attorney to engage a lawyer or other agent ad litem within the territory of the People's Republic of China by a foreign national, stateless person or a foreign enterprise or organization that has no domicile in the People's Republic of China, or any power of attorney

mailed or forwarded from outside the territory of the People's Republic of China must be authenticated by a notarial office in the country where that person or enterprise or organization has domicile and confirmed by the Chinese embassy or consulate stationed in that country or must go through the notarial formalities stipulated in the relevant bilateral treaties between China and that country before it becomes effective.

Chapter XXV Jurisdiction

Article 243 A lawsuit brought against a defendant who has no domicile in the People's Republic of China concerning a contract dispute or other disputes over property rights and interests, if the contract is signed or performed within the territory of the People's Republic of China, or the subject matter of the action is within the territory of the People's Republic of China, or the defendant has distrainable property within the territory of the People's Republic of China, or the defendant has its representative agency, branch or business agent within the territory of the People's Republic of China, may be under the jurisdiction of the people's court in the place where the contract is signed or performed, or where the subject matter of the action is located, or where the defendant's distrainable property is located, or where the infringing act takes place, or where the representative agency, branch or business agent is located.

Article 244 Parties to a dispute over a contract involving foreign interests or over property rights and interests involving foreign interests may, through written agreement, choose the people's court in the place which has actual connections with the dispute as the court of jurisdiction. If a people's court of the People's Republic of China is chosen as the court of jurisdiction, the stipulations on jurisdiction by level and exclusive jurisdiction in this Law shall not be violated.

Article 245 If the defendant in a civil lawsuit involving foreign interests raises no objection to the jurisdiction of a people's court, responds to the prosecution and submits his or her defense, he or she shall be deemed to have admitted that this people's court has jurisdiction over the case.

Article 246 Lawsuits initiated for disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, or Chinese-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of the natural resources in the People's Republic of China shall be under the jurisdiction of the people's courts of the People's Republic of China.

Chapter XXVI Service and Time Periods

Article 247 A people's court may serve litigation document to a party who has no domicile within the territory of the People's Republic of China by the following methods:

- (1) to serve by the method specified in the international treaties concluded or acceded to by both the People's Republic of China and the country where the recipient of service resides;
- (2) to serve through diplomatic channels;
- (3) to entrust the service to the embassy or consulate of the People's Republic of China stationed in the country where the recipient of service resides;

(4) to serve through the agent ad litem who is empowered by the recipient of service to receive the service on his or her behalf;

(5) to serve through the party's representative agency within the territory of the People's Republic of China, or the branch or business agent empowered to receive the service on its behalf;

(6) to serve by post if the law of the country where the recipient of service resides so permits; in the event that no receipt is returned six months after the date on which the document was posted, but various circumstances justify the assumption that it has been served, the service shall be deemed completed upon the expiration of the time limit; and

(7) to serve by public notice, if none of the above-mentioned methods can be employed. The service shall be considered completed six months after the date on which the public notice was issued.

Article 248 If a defendant has no domicile in the People's Republic of China, the people's court shall serve a copy of the bill of complaint on the defendant and notify him or her to forward his or her bill of defense within 30 days after he receives the copy of the bill of complaint. Any extension of the term requested by the defendant shall be at the discretion of the people's court.

Article 249 If any party who has no domicile in the People's Republic of China is dissatisfied with a judgment or order made by a people's court of first instance, the party shall have the right to file an appeal within 30 days from the date the written judgment or order is served. The appellee shall forward his or her bill of defense within 30 days after he or she has received a copy of the appeal petition. If a party is unable to file an appeal or forward a bill of defense within the period of time prescribed by law, and therefore requests an extension of the period, the people's court shall decide to approve or disapprove it.

Article 250 The time period for handling a civil case involving foreign interests by the people's court shall not be limited by the provisions of Article 135 and 159 of this Law.

Chapter XXVII Property Preservation

Article 251 The parties may, in accordance with the provisions of Article 92 of this Law, apply to the people's court for property preservation.

The interested parties may, in accordance with the provisions of Article 93 of this Law, apply to the people's court for property preservation before a lawsuit is brought.

Article 252 After a people's court has ordered to grant property preservation before litigation, the applicant shall bring a lawsuit within 30 days. If the party fails to bring a lawsuit within the time limit, the people's court shall cancel the property preservation.

Article 253 After the people's court has ordered to grant property preservation, if a security is provided by the person against when the application is made, the people's court shall cancel the property preservation.

Article 254 If an application is wrongfully made, the applicant shall compensate the person

against whom the application is made for losses incurred by the property preservation.

Article 255 If a property preserved by a people's court needs to be kept under surveillance, it shall notify the unit concerned to be responsible for the surveillance, and the person against whom the application is made shall bear the expenses thus incurred.

Article 256 An order to cancel the preservation issued by a people's court shall be carried out by an execution officer.

Chapter XXVIII Arbitration

Article 257 With respect to contract disputes arising from the foreign economic, trade, transport or maritime activities of China, if the parties have stipulated clauses on arbitration in the contract or have subsequently reached a written agreement on arbitration, they shall submit such disputes for arbitration to the arbitration agency on foreign-related disputes of China, and they shall not bring a suit in a people's court.

If the parties have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement on arbitration, they may file a lawsuit in the people's court.

Article 258 If any party has applied for the adoption of property preservation measures, the arbitration agency on foreign-related disputes of the People's Republic of China shall submit for an order the party's application to the intermediate people's court in the place where the person against whom the application is filed has his or her domicile or where the said person's property is located.

Article 259 If one party fails to comply with the award made by the arbitration agency on foreign-related disputes of the People's Republic of China, the other party may apply for execution to the intermediate people's court in the place where the person against whom the application is made has his or her domicile or where the property of the said person is located.

Article 260 If the person against whom the application is made provides evidence which proves that the arbitral award made by the arbitration agency on foreign-related disputes of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order not to execute the award:

- (1) the parties have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement on arbitration;
- (2) the person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he is not held responsible;
- (3) the composition of the arbitration tribunal or the procedure for arbitration is not in conformity with rules of arbitration; or
- (4) matters decided exceed the scope of the arbitration agreement or the limits of authority of the arbitration agency.

If the people's court determines that the execution of the award is against the social and public

interest, it shall order not to execute the arbitral award.

Article 261 If the execution of an arbitral award is disallowed by the people's court, the parties may, in accordance with the written agreement on arbitration concluded between them, apply to the arbitration agency for arbitration anew, or may file a lawsuit in a people's court.

Chapter XXIX Judicial Assistance

Article 262 In accordance with the international treaties concluded or acceded to by the People's Republic of China or on the principle of reciprocity, the people's courts of China and foreign courts may request each other's assistance in the service of legal documents, in investigation and collection of evidence or in other litigation acts.

If any matter requested by a foreign court for assistance would impair the sovereignty, security or social and public interest of the People's Republic of China, the people's court shall refuse to carry it out.

Article 263 The request for and providing of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China or through diplomatic channels.

Any foreign embassy or consulate stationed in the People's Republic of China may serve documents and carry out investigation and collection of evidence with respect to its nationals, provided that the laws of the People's Republic of China are not violated and no compulsory measures may be adopted.

Except for the circumstances prescribed in the preceding paragraph, no foreign organization or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents or carry out investigation and collection of evidence within the territory of the People's Republic of China.

Article 264 The letter of request for judicial assistance and its annexes submitted by a foreign court to a people's court shall be appended with a Chinese translation or a text in other languages specified in the relevant international treaties.

The letter of request and its annexes submitted to a foreign court by a people's court for judicial assistance shall be appended with a translation in the language of the country or a text in other languages specified in the relevant international treaties.

Article 265 The judicial assistance provided by the people's courts shall be carried out in accordance with the procedure stipulated by the law of the People's Republic of China. If a special method is requested by a foreign court, the judicial assistance may also be carried out in such a method as requested, provided that the requested special method does not contradict the law of the People's Republic of China.

Article 266 If a party applies for execution of a legally effective judgment or order made by a people's court and the party subject to execution or its property is not within the territory of the People's Republic of China, it may directly apply for recognition and enforcement to the foreign

court which has jurisdiction over the case, or the people's court may, in accordance with the relevant provisions of the international treaties concluded or acceded to by China, or on the principle of reciprocity, request recognition and enforcement by a foreign court.

If a party applies for execution of a legally effective arbitral award made by an arbitration agency on foreign-related disputes of the People's Republic of China and the party subject to execution or its property is not within the territory of the People's Republic of China, it may directly apply for recognition and enforcement to the foreign court which has jurisdiction over the case.

Article 267 If a legally effective judgment or order made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply to the intermediate people's court of the People's Republic of China which has jurisdiction over the case for recognition and enforcement, or the foreign court may, in accordance with the provisions of the international treaties concluded or acceded to by the People's Republic of China or on the principle of reciprocity, request recognition and enforcement by a people's court.

Article 268 If a people's court of the People's Republic of China, after its review in accordance with the international treaties concluded or acceded to by the People's Republic of China or under the principle of reciprocity, considers that the legally effective judgment or order of a foreign court which requires recognition and enforcement does not contradict the basic principles of the law of the People's Republic of China nor violates the State and social, public interest of China, it shall render an order on the recognition of its force. Where an execution is necessary, a writ of execution shall be issued and enforced in accordance with the relevant provisions of this Law. If it contradicts the basic principles of the law of the People's Republic of China or the State and social, public interest of China, the people's court shall refuse its recognition and enforcement.

Article 269 If an award made by a foreign arbitration agency requires the recognition and enforcement by a people's court of the People's Republic of China, the party concerned shall directly apply to the intermediate people's court in the place where the party subject to execution has its domicile or where its property is located. The people's court shall deal with the matter in accordance with the relevant provisions of the international treaties concluded or acceded to by the People's Republic of China or under the principle of reciprocity.

Article 270 This Law shall come into force on the date of promulgation, and the Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be annulled simultaneously.

Labour Law of The People's Republic of China



Order of the President of the People's Republic of China
No.28

The Labour Law of the People's Republic of China which has been adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994 is promulgated now, and shall enter into force as of January 1, 1995.

President of the People's Republic of China: Jiang Zemin
July 5, 1994

Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of laborers, readjust labor relationship, establish and safeguard a labor system suited to the socialist market economy, and promote economic development and social progress.

Article 2 This Law applies to all enterprises and individual economic organizations (hereinafter referred to as employing units) within the boundary of the People's Republic of China and laborers who form a labor relationship therewith.
State organs, institutional organizations and societies as well as laborers who form a labor contract relationship therewith shall follow this Law.

Article 3 Laborers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labor, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labor disputes, and other rights relating to labor as stipulated by law.
Laborers shall fulfill their labor tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labor discipline and professional ethics.

Article 4 The employing units shall establish and perfect rules and regulations in accordance with the law so as to ensure that laborers enjoy the right to work and fulfill labor obligations.

Article 5 The State shall take various measures to promote employment, develop vocational education, lay down labor standards, regulate social incomes, perfect social insurance system, coordinate labor relationship, and gradually raise the living standard of laborers.

Article 6 The State shall advocate the participation of laborers in social voluntary labor and the development of their labor competitions and activities of forwarding rational proposals, encourage and protect the scientific research and technical renovation engaged by laborers, as well as their inventions and creations; and commend and award labor models and advanced workers.

Article 7 Laborers shall have the right to participate in and organize trade unions in accordance with the law.

Trade unions shall represent and safeguard the legitimate rights and interests of laborers, and independently conduct their activities in accordance with the law.

Article 8 Laborers shall, through the assembly of staff and workers or their congress, or other forms in accordance with the provisions of laws, rules and regulations, take part in democratic management or consult with the employing units on an equal footing about protection of the legitimate rights and interests of laborers.

Article 9 The labor administrative department of the State Council shall be in charge of the management of labor of the whole country.

The labor administrative departments of the local people's governments at or above the county level shall be in charge of the management of labor in the administrative areas under their respective jurisdiction.

Chapter II Promotion of Employment

Article 10 The State shall create conditions for employment and increase opportunities for employment by means of the promotion of economic and social development.

The State shall encourage enterprises, institutional organizations, and societies to initiate industries or expand businesses for the increase of employment within the scope of the stipulations of laws, and administrative rules and regulations.

The State shall support laborers to get jobs by organizing themselves on a voluntary basis or by engaging in individual businesses.

Article 11 Local people's governments at various levels shall take measures to develop various kinds of job-introduction agencies and provide employment services.

Article 12 Laborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief.

Article 13 Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for females as stipulated by the State.

Article 14 Where there are special stipulations in laws, rules and regulations on the employment of the disabled, the personnel of national minorities, and demobilized army men, such special stipulations shall apply.

Article 15 No employing units shall be allowed to recruit juveniles under the age of 16.

Units of literature and art, physical culture and sport, and special arts and crafts that need to recruit

juveniles under the age of 16 must go through the formalities of examination and approval according to the relevant provisions of the State and guarantee their right to compulsory education.

Chapter III Labor Contracts and Collective Contracts

Article 16 A labor contract is the agreement reached between a laborer and an employing unit for the establishment of the labor relationship and the definition of the rights, interests and obligations of each party.

A labor contract shall be concluded where a labor relationship is to be established.

Article 17 Conclusion and modification of a labor contract shall follow the principles of equality, voluntariness and unanimity through consultation, and shall not run counter to the stipulations of laws, administrative rules and regulations.

A labor contract once concluded in accordance with the law shall possess legal binding force. The parties involved must fulfill the obligations as stipulated in the labor contract.

Article 18 The following labor contracts shall be invalid:

- (1) labor contracts concluded in violation of laws, administrative rules and regulations; and
- (2) labor contracts concluded by resorting to such measures as cheating and intimidation.

An invalid labor contract shall have no legal binding force from the very beginning of its conclusion. Where a part of a labor contract is confirmed as invalid and where the validity of the remaining part is not affected, the remaining part shall remain valid.

The invalidity of a labor contract shall be confirmed by a labor dispute arbitration committee or a people's court.

Article 19 A labor contract shall be concluded in written form and contain the following clauses:

- (1) term of a labor contract;
- (2) contents of work;
- (3) labor protection and working conditions;
- (4) labor remuneration;
- (5) labor disciplines;
- (6) conditions for the termination of a labor contract; and
- (7) responsibility for the violation of a labor contract.

Apart from the required clauses specified in the preceding paragraph, other contents in a labor contract may be agreed upon through consultation by the parties involved.

Article 20 The term of a labor contract shall be divided into fixed term, flexible term or taking the completion of a specific amount of work as a term.

In case a laborer has kept working in a same employing unit for ten years or more and the parties involved agree to extend the term of the labor contract, a labor contract with a flexible term shall be concluded between them if the laborer so requested.

Article 21 A probation period may be agreed upon in a labor contract. The longest probation

period shall not exceed six months.

Article 22 The parties involved in a labor contract may reach an agreement in their labor contract on matters concerning keeping the commercial secrets of the employing unit.

Article 23 A labor contract shall terminate upon the expiration of its term or the emergence of the conditions for the termination of the labor contract as agreed upon by the parties involved.

Article 24 A labor contract may be revoked upon agreement reached between the parties involved through consultation.

Article 25 The employing unit may revoke the labor contract with a laborer in any of the following circumstances:

- (1) to be proved not up to the requirements for recruitment during the probation period;
- (2) to seriously violate labor disciplines or the rules and regulations of the employing unit;
- (3) to cause great losses to the employing unit due to serious dereliction of duty or engagement in malpractice for selfish ends; and
- (4) to be investigated for criminal responsibilities in accordance with the law.

Article 26 In any of the following circumstances, the employing unit may revoke a labor contract but a written notification shall be given to the laborer 30 days in advance:

- (1) where a laborer is unable to take up his original work or any new work arranged by the employing unit after the completion of his medical treatment for illness or injury not suffered from at work;
- (2) where a laborer is unqualified for his work and remains unqualified even after receiving a training or an adjustment to an other work post; and
- (3) no agreement on modification of the labor contract can be reached through consultation by the parties involved when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labor contract can no longer be carried out.

Article 27 During the period of statutory consolidation when the employing unit comes to the brink of bankruptcy or runs deep into difficulties in production and management, and if reduction of its personnel becomes really necessary, the unit may make such reduction after it has explained the situation to the trade union or all of its staff and workers 30 days in advance, solicited opinions from them and reported to the labor administrative department.

Where the employing unit is to recruit personnel six months after the personnel reduction effected according to the stipulations of this Article , the reduced personnel shall have the priority to be re-employed.

Article 28 The employing unit shall make economic compensations in accordance with the relevant provisions of the State if it revokes its labor contracts according to the stipulations in Article 24, Article 26 and Article 27 of this Law.

Article 29 The employing unit shall not revoke its labor contract with a laborer in accordance with

the stipulations in Article 26 and Article 27 of this Law in any of the following circumstances:

- (1) to be confirmed to have totally or partially lost the ability to work due to occupational diseases or injuries suffered from at work;
- (2) to be receiving medical treatment for diseases or injuries within the prescribed period of time;
- (3) to be a female staff member or worker during pregnant, puerperal, or breast-feeding period; or
- (4) other circumstances stipulated by laws, administrative rules and regulations.

Article 30 The trade union of an employing unit shall have the right to air its opinions if it regards as inappropriate the revocation of a labor contract by the unit. If the employing unit violates laws, rules and regulations or labor contracts, the trade union shall have the right to request for reconsideration. Where the laborer applies for arbitration or brings in a lawsuit, the trade union shall render him support and assistance in accordance with the law.

Article 31 A laborer who intends to revoke his labor contract shall give a written notice to the employing unit 30 days in advance.

Article 32 A laborer may notify at any time the employing unit of his decision to revoke the labor contract in any of the following circumstances:

- (1) within the probation period;
- (2) where the employing unit forces the laborer to work by resorting to violence, intimidation or illegal restriction of personal freedom; or
- (3) failure on the part of the employing unit to pay labor remuneration or to provide working conditions as agreed upon in the labor contract.

Article 33 The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labor remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.

Article 34 A collective contract shall be submitted to the labor administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labor administrative department within 15 days from the date of the receipt of a copy of the contract.

Article 35 Collective contracts concluded in accordance with the law shall have binding force to both the enterprise and all of its staff and workers. The standards on working conditions and labor payments agreed upon in labor contracts concluded between individual laborers and the enterprise shall not be lower than those as stipulated in collective contracts.

Chapter IV Working Hours, Rest and Vacations

Article 36 The State shall practise a working hour system under which laborers shall work for no more than eight hours a day and no more than 44 hours a week on the average.

Article 37 In case of laborers working on the basis of piecework, the employing unit shall rationally fix quotas of work and standards on piecework remuneration in accordance with the working hour system stipulated in Article 36 of this Law.

Article 38 The employing unit shall guarantee that its staff and workers have at least one day off in a week.

Article 39 Where an enterprise can not follow the stipulations in Article 36 and Article 38 of this Law due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labor administrative department.

Article 40 The employing unit shall arrange holidays for laborers in accordance with the law during the following festivals:

- (1) the New Year's Day;
- (2) the Spring Festival;
- (3) the International Labor Day;
- (4) the National Day; and
- (5) other holidays stipulated by laws, rules and regulations.

Article 41 The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and laborers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of laborers is guaranteed. However, the total extension in a month shall not exceed thirty six hours.

Article 42 The extension of working hours shall not be subject to restriction of the provisions of Article 41 of this Law under any of the following circumstances:

- (1) where emergent dealing is needed in the event of natural disaster, accident or other reason that threatens the life, health and the safety of property of laborers;
- (2) where prompt rush repair is needed in the event of breakdown of production equipment, transportation lines or public facilities that affects production and public interests; and
- (3) other circumstances as stipulated by laws, administrative rules and regulations.

Article 43 The employing unit shall not extend working hours of laborers in violation of the provisions of this Law.

Article 44 The employing unit shall, according to the following standards, pay laborers remunerations higher than those for normal working hours under any of the following circumstances:

- (1) to pay no less than 150 per cent of the normal wages if the extension of working hours is arranged;
- (2) to pay no less than 200 per cent of the normal wages if the extended hours are arranged on days of rest and no deferred rest can be taken; and
- (3) to pay no less than 300 per cent of the normal wages if the extended hours are arranged on statutory holidays.

Article 45 The State shall practise a system of annual vacation with pay.

Laborers who have kept working for one year and more shall be entitled to annual vacation with pay. The concrete measures shall be formulated by the State Council.

Chapter V Wages

Article 46 The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.

The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-regulations and control over the total payroll.

Article 47 The employing unit shall independently determine its form of wage distribution and wage level for its own unit according to law and based on the characteristics of its production and business and economic results.

Article 48 The State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record.

Wages paid to laborers by the employing unit shall not be lower than the local standards on minimum wages.

Article 49 The determination and readjustment of the standards on minimum wages shall be made with reference to the following factors in a comprehensive manner:

- (1) the lowest living expenses of laborers themselves and the average family members they support;
- (2) the average wage level of the society as a whole;
- (3) labor productivity;
- (4) the situation of employment; and
- (5) the different levels of economic development between regions.

Article 50 Wages shall be paid monthly to laborers themselves in cash. The wages paid to laborers shall not be deducted or delayed without justification.

Article 51 The employing unit shall pay wages according to law to laborers who observe statutory holidays, take leaves during the periods of marriage or funeral, or participate in social activities in accordance with the law.

Chapter VI Occupational Safety and Health

Article 52 The employing unit must establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate laborers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards.

Article 53 Facilities of occupational safety and health must meet the standards stipulated by the State.

Facilities of occupational safety and health installed in new projects and projects to be rebuilt or expanded must be designed, constructed and put into operation and use at the same time as the main projects.

Article 54 The employing unit must provide laborers with occupational safety and health conditions conforming to the provisions of the State and necessary Articles of labor protection, and provide regular health examination for laborers engaged in work with occupational hazards.

Article 55 Laborers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

Article 56 Laborers must strictly abide by rules of safe operation in the process of their work. Laborers shall have the right to refuse to operate if the management personnel of the employing unit command the operation in violation of rules and regulations or force laborers to run risks in operation; laborers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

Article 57 The State shall establish a system for the statistics, reports and dispositions of accidents of injuries and deaths, and cases of occupational diseases. The labor administrative departments and other relevant departments of the people's governments at or above the county level and the employing unit shall, according to law, compile statistics, report and dispose of accidents of injuries and deaths that occurred in the process of their work and cases of occupational diseases.

Chapter VII Special Protection for Female and Juvenile Workers

Article 58 The State shall provide female workers and juvenile workers with special protection. "Juvenile workers" hereby refer to laborers at the age of 16 but not 18 yet.

Article 59 It is prohibited to arrange female workers to engage in work down the pit of mines, or work with Grade IV physical labor intensity as stipulated by the State, or other work that female workers should avoid.

Article 60 Female workers during their menstrual periods shall not be arranged to engage in work high above the ground, under low temperature, or in cold water or work with Grade III physical

labor intensity as stipulated by the State.

Article 61 Female workers during their pregnancy shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other work that they should avoid in pregnancy. Female workers pregnant for seven months or more shall not be arranged to extend their working hours or to work night shifts.

Article 62 After childbirth, female workers shall be entitled to no less than ninety days of maternity leaves with pay.

Article 63 Female workers during the period of breast-feeding their babies less than one year old shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other labor that they should avoid during their breast-feeding period, or to extend their working hours or to work night shifts.

Article 64 No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labor intensity as stipulated by the State, or other work that they should avoid.

Article 65 The employing unit shall provide regular physical examinations to juvenile workers.

Chapter VIII Vocational Training

Article 66 The State shall take various measures through various channels to expand vocational training undertakings so as to develop professional skills of laborers, improve their qualities, and raise their employment capability and work ability.

Article 67 People's governments at various levels shall incorporate the development of vocational training in the plans of social and economic development, encourage and support all enterprises, institutional organizations, societies and individuals, where conditions permit, to sponsor all kinds of vocational training.

Article 68 The employing unit shall establish a system for vocational training, raise and use funds for vocational training in accordance with the provisions of the State, and provide laborers with vocational training in a planned way and in the light of the actual situation of the unit. Laborers to be engaged in technical work must receive pre-job training before taking up their posts.

Article 69 The State shall determine occupational classification, set up professional skill standards for the occupations classified, and practise a system of vocational qualification certificates. Examination and verification organizations authorized by the government are in charge of the examination and verification of the professional skills of laborers.

Chapter IX Social Insurance and Welfare

Article 70 The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that laborers may receive assistance and compensations under such circumstances as old age, illness, work-related injury, unemployment and child-bearing.

Article 71 The level of social insurance shall be in proportion to the level of social and economic development and the social affordability.

Article 72 The sources of social insurance funds shall be determined according to the categories of insurance, and an overall pooling of insurance funds from the society shall be introduced step by step. The employing unit and laborers must participate in social insurance and pay social insurance premiums in accordance with the law.

Article 73 Laborers shall, in accordance with the law, enjoy social insurance benefits under the following circumstances:

- (1) retirement;
- (2) illness or injury;
- (3) disability caused by work-related injury or occupational disease;
- (4) unemployment; and
- (5) child-bearing.

The survivors of the insured laborers shall be entitled to subsidies for survivors in accordance with the law.

The conditions and standards for laborers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

The social insurance amount that laborers are entitled to, must be timely paid in full.

Article 74 The agencies in charge of social insurance funds shall collect, expend, manage and operate the funds in accordance with the stipulations of laws, and assume the responsibility to maintain and raise the value of these funds.

The supervisory organizations of social insurance funds shall exercise supervision over the revenue and expenditure, management and operation of social insurance funds in accordance with the stipulations of laws.

The establishment and function of the agencies in charge of social insurance funds and the supervisory organizations of social insurance funds shall be stipulated by laws.

No organization or individual shall be allowed to misappropriate social insurance funds.

Article 75 The State shall encourage the employing unit to set up supplementary insurance for laborers according to its practical situations.

The State shall advocate that laborers practise individual insurance in form of saving account.

Article 76 The State shall develop social welfare undertakings, construct public welfare facilities, and provide laborers with conditions for taking rest, recuperation and rehabilitation.

The employing unit shall create conditions so as to improve collective welfare and raise welfare

treatment of laborers.

Chapter X Labor Disputes

Article 77 Where a labor dispute between the employing unit and laborers takes place, the parties concerned may apply for mediation or arbitration or take legal proceedings according to law, or may seek for a settlement through consultation.

The principle of mediation shall apply to the procedures of arbitration and lawsuit.

Article 78 The settlement of a labor dispute shall follow the principle of legality, fairness and promptness so as to safeguard in accordance with the law the legitimate rights and interests of the parties involved.

Article 79 Where a labor dispute takes place, the parties involved may apply to the labor dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests for arbitration, that party may apply to the labor dispute arbitration committee for arbitration. Either party may also directly apply to the labor dispute arbitration committee for arbitration. If one of the parties is not satisfied with the adjudication of arbitration, the party may bring the case to a people's court.

Article 80 A labor dispute mediation committee may be established inside the employing unit. The committee shall be composed of representatives of the staff and workers, representatives of the employing unit, and representatives of the trade union. The chairman of the committee shall be held by a representative of the trade union.

Agreements reached on labor disputes through mediation shall be implemented by the parties involved.

Article 81 A labor dispute arbitration committee shall be composed of representatives of the labor administrative department, representatives from the trade union at the corresponding level, and representatives of the employing unit. The chairman of the committee shall be held by a representative of the labor administrative department.

Article 82 The party that requests for arbitration shall file a written application to a labor dispute arbitration committee within 60 days starting from the date of the occurrence of a labor dispute. The arbitration committee may generally make an adjudication within 60 days from the date of receiving the application. The parties involved must implement the adjudication if no objections are raised.

Article 83 Where a party involved in a labor dispute is not satisfied with the adjudication, the party may bring a lawsuit to a people's court within 15 days from the date of receiving the ruling of arbitration. Where one of the parties involved neither brings a lawsuit nor implements the adjudication of arbitration within the statutory time limit, the other party may apply to a people's court for compulsory implementation.

Article 84 Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the labor administrative department of the local people's government may organize the relevant departments to handle the case in coordination.

Where a dispute arises from the implementation of a collective contract and no settlement can be reached through consultation by the parties concerned, the dispute may be submitted to the labor dispute arbitration committee for arbitration. Any party that is not satisfied with the adjudication of arbitration may bring a lawsuit to a people's court within 15 days from the date of receiving the adjudication.

Chapter XI Supervision and Inspection

Article 85 The labor administrative departments of people's governments at or above the county level shall, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labor by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labor and order the rectification thereof.

Article 86 The inspectors from the labor administrative departments of people's governments at or above the county level shall, while performing their public duties, have the right to enter the employing units to make investigations about the implementation of laws, rules and regulations on labor, examine necessary data and inspect labor sites.

The inspectors from the labor administrative departments of people's governments at or above the county level must show their certifications while performing public duties, impartially enforce laws, and abide by relevant stipulations.

Article 87 Relevant departments of people's governments at or above the county level shall, within the scope of their respective duties and responsibilities, supervise the implementation of laws, rules and regulations on labor by the employing units.

Article 88 Trade unions at various levels shall, in accordance with the law, safeguard the legitimate rights and interests of laborers, and supervise the implementation of laws, rules and regulations on labor by the employing units.

Any organizations or individuals shall have the right to expose and accuse any acts in violation of laws, rules and regulations on labor.

Chapter XII Legal Responsibility

Article 89 Where the rules and regulations on labor formulated by the employing unit run counter to the provisions of laws, rules and regulations, the labor administrative department shall give a warning to the unit, order it to make corrections; where any harms have been caused to laborers, the unit shall be liable for compensations.

Article 90 Where the employing unit extends working hours of laborers in violation of the stipulations of this Law, the labor administrative department shall give it a warning, order it to

make corrections, and may impose a fine.

Article 91 Where an employing unit infringes in any of the following ways the legitimate rights and interests of laborers, the labor administrative department shall order it to pay laborers remuneration or to make up for economic losses, and may also order it to pay compensations:

- (1) to deduct wages or delay in paying wages to laborers without reason;
- (2) to refuse to pay laborers remuneration for the extended working hours;
- (3) to pay laborers wages below the local standard on minimum wages; or
- (4) to fail to provide laborers with economic compensations in accordance with the provisions of this Law after revocation of labor contracts.

Article 92 Where the occupational safety facilities and health conditions of an employing unit do not comply with the provisions of the State or the unit fails to provide laborers with necessary labor protection Articles and labor protection facilities the labor administrative department or other relevant departments shall order it to make corrections, and may impose a fine. If circumstances are serious, the above-said departments shall apply to a people's government at or above the county level for a decision to order the unit to stop production for consolidation. If the unit fails to take measures against potential accident which later leads to the occurrence of a serious accident and the losses of laborers' lives and properties, criminal responsibilities shall be investigated against the persons in charge mutatis mutandis the stipulations of Article 187 of the Criminal Law.

Article 93 Where an employing unit forces laborers to operate with risks in violation of the rules and regulations, causing thus major accident of injuries and deaths, and serious consequences, criminal responsibilities of the person in charge shall be investigated according to law.

Article 94 Where an employing unit illegally recruits juveniles under the age of 16, the labor administrative department shall order it to make corrections, and impose a fine. If circumstances are serious, the administrative department for industry and commerce shall revoke its business license.

Article 95 Where an employing unit encroaches upon the legitimate rights and interests of female and juvenile workers in violation of the stipulations of this Law on their protection, the labor administrative department shall order it to make corrections, and impose a fine. If harms to female and juvenile workers have been caused, the unit shall assume the responsibility for compensations.

Article 96 Where an employing unit commits one of the following acts, the person in charge shall be taken by a public security organ into custody for 15 days or less, or fined, or given a warning; and criminal responsibilities shall be investigated against the person in charge according to law if the act constitutes a crime:

- (1) to force laborers to work by resorting to violence, intimidation or illegal restriction of personal freedom; or
- (2) humiliating, giving corporal punishment, beating, illegally searching or detaining laborers.

Article 97 The employing unit shall bear the responsibility for compensation if the conclusion of any invalid contracts is attributed to the unit and have caused damages to laborers.

Article 98 The employing unit that revokes labor contracts or purposely delays the conclusion of labor contracts in violation of the conditions specified in this Law shall be ordered by the labor administrative department to make corrections and shall bear the responsibility for compensation if damages have been caused to laborers.

Article 99 The employing unit that recruits laborers whose labor contracts have not yet been revoked shall, according to law, assume joint responsibility for compensation if economic losses have been caused to the original employing unit of the laborers.

Article 100 The employing unit that fails to pay social insurance premium without reason shall be ordered by the labor administrative department to pay within fixed period of time. If the unit still fails to make the payment beyond the time limit, an additional arrear payment may be demanded.

Article 101 Where an employing unit unjustifiably obstructs the labor administrative department and other relevant departments as well as their functionaries from exercising the powers of supervision and inspection or retaliates informers, the labor administrative department or other relevant departments shall impose fines upon the unit. If a crime is constituted, the person in charge shall be investigated for criminal responsibilities according to law.

Article 102 Laborers who revoke labor contracts in violation of the conditions specified in this Law or violate terms on secret-keeping matters agreed upon in the labor contracts and thus have caused economic losses to the employing unit shall be liable for compensation in accordance with the law.

Article 103 The functionaries of the labor administrative department or other relevant departments who abuse their functions and powers, neglect their duties, and engage in malpractices for selfish ends, shall be investigated for criminal responsibilities according to law if a crime is constituted, or shall be given an administrative sanction if the offenses do not yet constitute a crime.

Article 104 The functionaries of the State or the agencies in charge of social insurance funds who misappropriate the social insurance funds, shall be investigated for criminal responsibilities according to law if a crime is constituted.

Article 105 Where other laws or administrative rules and regulations have already specified punishments for the encroachment of the legitimate rights and interests of laborers that also violate the stipulations of this Law, punishments shall be given in accordance with the stipulations of those laws or administrative rules and regulations.

Chapter XIII Supplementary Provisions

Article 106 People's governments of provinces, autonomous regions and municipalities directly

under the Central Government shall work out the implementing measures for the labor contract system according to this Law and in light of their local conditions, and report the measures to the State Council for the record.

Article 107 This Law shall enter into force as of January 1,1995.

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS



Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007

Effective from January 1, 2008

CHAPTER 1 GENERAL PROVISIONS

Article 1

This Law has been formulated in order to improve the employment contract system, to specify the rights and obligations of the parties to employment contracts, to protect the lawful rights and interests of Employees and to build and develop harmonious and stable employment relationships.

Article 2

This Law governs the establishment of employment relationships between, and the conclusion, performance, amendment, termination and ending of employment contracts by, organizations such as enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China ("Employers") on the one hand and Employees in the People's Republic of China on the other hand.

The conclusion, performance, amendment, termination and ending of employment contracts by state authorities, institutions or social organizations on the one hand and Employees with whom they establish employment relationships on the other hand, shall be handled pursuant to this Law.

Article 3

The conclusion of employment contracts shall comply with the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.

A lawfully concluded employment contract is binding, and both the Employer and the Employee shall perform their respective obligations stipulated therein.

Article 4

Employers shall establish and improve internal rules and regulations, so as to ensure that Employees enjoy their labor rights and perform their labor obligations.

When an Employer formulates, revises or decides on rules and regulations, or material matters, that have a direct bearing on the immediate interests of its Employees, such as those concerning compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the Trade union or employee representatives conducted on a basis of equality.

If, during the implementation of an Employer's rule or regulation or decision on a crucial matter, the Trade union or an employee is of the opinion that the same is inappropriate, it or he is entitled

to communicate such opinion to the Employer, and the rule, regulation or decision shall be improved by making amendments after consultations.

Rules and regulations, and decisions on material matters, that have a direct bearing on the immediate interests of Employees shall be made public or be communicated to the Employees by the Employer.

Article 5

The labor administration authorities of People's Governments at the county level and above, together with the Trade union and enterprise representatives, shall establish a comprehensive tri-partite mechanism for the coordination of employment relationships, in order to jointly study and resolve major issues concerning employment relationships.

Article 6

A Trade union shall assist and guide Employees in the conclusion of employment contracts with their Employer and the performance thereof in accordance with the law, and establish a collective bargaining mechanism with the Employer in order to safeguard the lawful rights and interests of Employees.

CHAPTER 2 CONCLUSION OF EMPLOYMENT CONTRACTS

Article 7

An Employer's employment relationship with a Employee is established on the date it starts using the Employee. An Employer shall keep a register of employees, for reference purposes.

Article 8

When an Employer hires a Employee, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the Employee requests to be informed about. The Employer has the right to learn from the Employee basic information which directly relates to the employment contract, and the Employee shall truthfully provide the same.

Article 9

When hiring a Employee, an Employer may not retain the Employee's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise.

Article 10

To establish an employment relationship, a written employment contract shall be concluded. In the event that no written employment contract was concluded at the time of establishment of an employment relationship, a written employment contract shall be concluded within one month after the date on which the Employer starts using the Employee. Where an Employer and a Employee conclude an employment contract before the Employer starts using the Employee, the employment relationship shall be established on the date on which the Employer starts using the Employee.

Article 11

In the event that an Employer fails to conclude a written employment contract with a Employee at the time its starts to use him, and it is not clear what labor compensation was agreed upon with the Employee, the labor compensation of the new Employee shall be decided pursuant to the rate specified in the collective contract; where there is no collective contract or the collective contract is silent on the matter, equal pay shall be given for equal work.

Article 12

Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job.

Article 13

A “fixed-term employment contract” is an employment contract whose ending date is agreed upon by the Employer and the Employee.

An Employer and a Employee may conclude a fixed-term employment contract upon reaching a negotiated consensus.

Article 14

An “open-ended employment contract” is an employment contract for which the Employer and the Employee have agreed not to stipulate a definite ending date.

An Employer and a Employee may conclude an open-ended employment contract upon reaching a negotiated consensus. If a Employee proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an open-ended employment contract shall be concluded, unless the Employee requests the conclusion of a fixed-term employment contract:

- (1) The Employee has been working for the Employer for a consecutive period of not less than 10 years;
- (2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the Employee has been working for the Employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or
- (3) prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the Employee is not characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof.

If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract.

Article 15

An “employment contract with a term to expire upon completion of a certain job” is an employment contract in which the Employer and the Employee have agreed that the completion of a certain job is the term of the contract.

An Employer and a Employee may, upon reaching a negotiated consensus, conclude an

employment contract with a term to expire upon completion of a certain job.

Article 16

An employment contract shall become effective when the Employer and the Employee have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

The Employer and the Employee shall each hold one copy of the employment contract.

Article 17

An employment contract shall specify the following matters:

- (1) The name, domicile and legal representative or main person in charge of the Employer;
- (2) The name, domicile and number of the resident ID card or other valid identity document of the Employee;
- (3) The term of the employment contract;
- (4) The job description and the place of work;
- (5) Working hours, rest and leave;
- (6) Labor compensation;
- (7) Social insurance;
- (8) Labor protection, working conditions and protection against occupational hazards; and
- (9) Other matters which laws and statutes require to be included in employment contracts.

In addition to the requisite terms mentioned above, an Employer and a Employee may agree to stipulate other matters in the employment contract, such as probation period, training, confidentiality, supplementary insurance and benefits, etc.

Article 18

If a dispute arises due to the fact that the rate or standards for labor compensation or working conditions, etc. are not explicitly specified in the employment contract, the Employer and the Employee may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall apply. If there is no collective contract or the collective contract is silent on the issue of labor compensation, equal pay shall be given for equal work; if there is no collective contract or the collective contract is silent on the issue of working conditions, the relevant regulations of the state shall apply.

Article 19

If an employment contract has a term of not less than three months but less than one year, the probation period may not exceed one month; if an employment contract has a term of more than one year and less than three years, the probation period may not exceed two months; and if an employment contract has a term of not less than three years or is open-ended, the probation period may not exceed six months.

An Employer may stipulate only one probation period with any given Employee.

No probation period may be specified in an employment contract with a term to expire upon completion of a certain job or an employment contract with a term of less than three months.

The probation period shall be included in the term of the employment contract. If an employment contract provides for a probation period only, then there is no probation period and the term

concerned shall be the term of the employment contract.

Article 20

The wages of a Employee on probation may not be less than the lowest wage level for the same job with the Employer or less than 80 percent of the wage agreed upon in the employment contract, and may not be less than the minimum wage rate in the place where the Employer is located.

Article 21

An Employer may not terminate an employment contract during the probation period unless the Employee is characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof. If an Employer terminates an employment contract during the probation period, it shall explain the reasons to the Employee.

Article 22

If an Employer provides special funding for a Employee's training and gives him professional technical training, it may conclude an agreement specifying a term of service with such Employee. If the Employee breaches the agreement on the term of service, he shall pay liquidated damages to the Employer as agreed. The measure of the liquidated damages may not exceed the training expenses paid by the Employer. The liquidated damages that the Employer requires the Employee to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

The reaching of agreement on a term of service between the Employer and the Employee does not affect the raising of the Employee's labor compensation during the term of service according to the normal wage adjustment mechanism.

Article 23

An Employer and a Employee may include in their employment contract provisions on confidentiality matters relating to maintaining the confidentiality of the trade secrets of the Employer and to intellectual property.

If an Employee has a confidentiality obligation, the Employer may agree with the Employee on competition restriction provisions in the employment contract or confidentiality agreement, and stipulate that the Employer shall pay financial compensation to the Employee on a monthly basis during the term of the competition restriction after the termination or ending of the employment contract. If the Employee breaches the competition restriction provisions, he shall pay liquidated damages to the Employer as stipulated.

Article 24

The personnel subject to competition restrictions shall be limited to the Employer's senior management, senior technicians and other personnel with a confidentiality obligation. The scope, territory and term of the competition restrictions shall be agreed upon by the Employer and the Employee, and such agreement shall not violate laws and regulations.

The term, counted from the termination or ending of the employment contract, for which a person as mentioned in the preceding paragraph is subject to competition restrictions in terms of his working for a competing Employer that produces the same type of products or is engaged in the

same type of business as his current Employer, or in terms of his establishing his own business to produce the same type of products or engage in the same type of business, shall not exceed two years.

Article 25

With the exception of the circumstances specified in Articles 22 and 23 hereof, an Employer may not stipulate with a Employee provisions on the bearing of liquidated damages by the Employee.

Article 26

An employment contract shall be invalid or partially invalid if:

- (1) A party uses such means as deception or coercion, or takes advantage of the other party's difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party's true intent;
- (2) The Employer disclaims its legal liability or denies the Employee his rights; or
- (3) Mandatory provisions of laws or administrative statutes are violated.

If the invalidity or partial invalidity of the employment contract is disputed, it shall be confirmed by a labor dispute arbitration institution or a People's Court.

Article 27

If certain provisions of an employment contract are invalid and such invalidity does not affect the validity of the remaining provisions, the remaining provisions shall remain valid.

Article 28

If an employment contract is confirmed as invalid and the Employee has already performed labor, the Employer shall pay the Employee labor compensation. The amount of labor compensation shall be determined with reference to the labor compensation of Employees in the same or a similar position with the Employer.

CHAPTER 3 PERFORMANCE AND AMENDMENT OF EMPLOYMENT CONTRACTS

Article 29

The Employer and the Employee shall each fully perform its/his obligations in accordance with the employment contract.

Article 30

Employers shall pay their Employees labor compensation on time and in full in accordance with the employment contracts and state regulations.

If an Employer falls into arrears with the payment of labor compensation or fails to make payment in full, the Employee may, in accordance with the law, apply to the local People's Court for an order to pay; and the People's Court shall issue such order in accordance with the law.

Article 31

Employers shall strictly implement the work quota standards and may not compel or in a disguised

manner compel Employees to work overtime. If an Employer arranges for a Employee to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

Article 32

Employees shall not be held in breach of their employment contracts if they refuse to perform dangerous operations that are instructed in violation of regulations or peremptorily ordered by management staff of the Employer.

Employees have the right to criticize, report to the authorities or lodge accusations against their Employers in respect of working conditions that endanger their lives or health.

Article 33

Changes such a change in the name, legal representative or main person in charge of, or an (the) investor(s) in, an Employer shall not affect the performance of its employment contracts.

Article 34

If an Employer is merged or divided, etc., its existing employment contracts shall remain valid and continue to be performed by the Employer(s) which succeeded to its rights and obligations

Article 35

An Employer and a Employee may amend the provisions of their employment contract if they so agree after consultations. Amendments to an employment contract shall be made in writing.

The Employer and the Employee shall each hold one copy of the amended employment contract.

CHAPTER 4 TERMINATION AND ENDING OF EMPLOYMENT CONTRACTS

Article 36

An Employer and a Employee may terminate their employment contract if they so agree after consultations.

Article 37

A Employee may terminate his employment contract upon 30 days' prior written notice to his Employer. During his probation period, a Employee may terminate his employment contract by giving his Employer three days' prior notice.

Article 38

A Employee may terminate his employment contract if his Employer:

- (1) Fails to provide the labor protection or working conditions specified in the employment contract;
- (2) Fails to pay labor compensation in full and on time;
- (3) Fails to pay the social insurance premiums for the Employee in accordance with the law;
- (4) Has rules and regulations that violate laws or regulations, thereby harming the Employee's rights and interests;
- (5) causes the employment contract to be invalid due to a circumstance specified in the first paragraph of Article 26 hereof;

(6) Gives rise to another circumstance in which laws or administrative statutes permit a Employee to terminate his employment contract.

If an Employer uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work, or if a Employee is instructed in violation of rules and regulations or peremptorily ordered by his Employer to perform dangerous operations which threaten his personal safety, the Employee may terminate his employment contract forthwith without giving prior notice to the Employer.

Article 39

An Employer may terminate an employment contract if the Employee:

- (1) Is proved during the probation period not to satisfy the conditions for employment;
- (2) Materially breaches the Employer's rules and regulations;
- (3) Commits serious dereliction of duty or practices graft, causing substantial damage to the Employer;
- (4) has additionally established an employment relationship with another Employer which materially affects the completion of his tasks with the first-mentioned Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer;
- (5) causes the employment contract to be invalid due to the circumstance specified in item (1) of the first paragraph of Article 26 hereof; or
- (6) Has his criminal liability pursued in accordance with the law.

Article 40

An Employer may terminate an employment contract by giving the Employee himself 30 days' prior written notice, or one month's wage in lieu of notice, if:

- (1) after the set period of medical care for an illness or non-work-related injury, the Employee can engage neither in his original work nor in other work arranged for him by his Employer;
- (2) The Employee is incompetent and remains incompetent after training or adjustment of his position; or
- (3) A major change in the objective circumstances relied upon at the time of conclusion of the employment contract renders it unperformable and, after consultations, the Employer and Employee are unable to reach agreement on amending the employment contract.

Article 41

If any of the following circumstances makes it necessary to reduce the workforce by 20 persons or more or by a number of persons that is less than 20 but accounts for 10 percent or more of the total number of the enterprise's employees, the Employer may reduce the workforce after it has explained the circumstances to its Trade union or to all of its employees 30 days in advance, has considered the opinions of the Trade union or the employees and has subsequently reported the workforce reduction plan to the labor administration department:

- (1) Restructuring pursuant to the Enterprise Bankruptcy Law;
- (2) Serious difficulties in production and/or business operations;
- (3) The enterprise switches production, introduces a major technological innovation or revises its business method, and, after amendment of employment contracts, still needs to reduce its workforce; or

(4) Another major change in the objective economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable.

When reducing the workforce, the Employer shall retain with priority persons:

- (1) Who have concluded with the Employer fixed-term employment contracts with a relatively long term;
- (2) Who have concluded open-ended employment contracts with the Employer; or
- (3) Who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide.

If an Employer that has reduced its workforce pursuant to the first paragraph hereof hires again within six months, it shall give notice to the persons dismissed at the time of the reduction and, all things being equal, hire them on a preferential basis.

Article 42

An Employer may not terminate an employment contract pursuant to Article 40 or Article 41 hereof if the Employee:

- (1) is engaged in operations exposing him to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;
- (2) Has been confirmed as having lost or partially lost his capacity to work due to an occupational disease contracted or a work-related injury sustained with the Employer;
- (3) Has contracted an illness or sustained a non-work-related injury, and the set period of medical care therefore has not expired;
- (4) Is a female employee in her pregnancy, confinement or nursing period;
- (5) Has been working for the Employer continuously for not less than 15 years and is less than 5 years away from his legal retirement age;
- (6) Finds himself in other circumstances stipulated in laws or administrative statutes.

Article 43

When an Employer is to terminate an employment contract unilaterally, it shall give the Trade union advance notice of the reason therefore. If the Employer violates laws, administrative statutes or the employment contract, the Trade union has the right to demand that the Employer rectify the matter. The Employer shall study the Trade union's opinions and notify the Trade union in writing as to the outcome of its handling of the matter.

Article 44

An employment contract shall end if:

- (1) Its term expires;
- (2) The Employee has commenced drawing his basic old age insurance pension in accordance with the law;
- (3) The Employee dies, or is declared dead or missing by a People's Court;
- (4) The Employer is declared bankrupt;
- (5) The Employer has its business license revoked, is ordered to close or is closed down, or the Employer decides on early liquidation; or
- (6) Another circumstance specified in laws or administrative statutes arises.

Article 45

If an employment contract expires and any of the circumstances specified in Article 42 hereof applies, the term of the employment contract shall be extended until the relevant circumstance ceases to exist, at which point the contract shall end. However, matters relating to the ending of the employment contract of a Employee who has lost or partially lost his capacity to work as specified in item (2) of Article 42 hereof shall be handled in accordance with state regulations on work-related injury insurance.

Article 46

In any of the following circumstances, the Employer shall pay the Employee severance pay:

- (1) The employment contract is terminated by the Employee pursuant to Article 38 hereof;
- (2) The employment contract is terminated after such termination was proposed to the Employee by the Employer pursuant to Article 36 hereof and the parties reached agreement thereon after consultations;
- (3) The employment contract is terminated by the Employer pursuant to Article 40 hereof;
- (4) The employment contract is terminated by the Employer pursuant to the first paragraph of Article 41 hereof;
- (5) The employment contract is a fixed-term contract that ends pursuant to item (1) of Article 44 hereof, unless the Employee does not agree to renew the contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract;
- (6) The employment contract ends pursuant to item (4) or (5) of Article 44 hereof;
- (7) Other circumstances specified in laws or administrative statutes.

Article 47

A Employee shall be paid severance pay based on the number of years worked with the Employer at the rate of one month's wage for each full year worked. Any period of not less than six months but less than one year shall be counted as one year. The severance pay payable to a Employee for any period of less than six months shall be one-half of his monthly wages.

If the monthly wage of a Employee is greater than three times the average monthly wage of employees in the Employer's area as published by the People's Government at the level of municipality directly under the central government or municipality divided into districts of the area¹ where the Employer is located, the rate for the severance pay paid to him shall be three times the average monthly wage of employees and shall be for not more than 12 years of work.

For the purposes of this Article, the term "monthly wage" means the Employee's average monthly wage for the 12 months prior to the termination or ending of his employment contract.

Article 48

If an Employer terminates or ends an employment contract in violation of this Law and the Employee demands continued performance of such contract, the Employer shall continue performing the same. If the Employee does not demand continued performance of the employment contract or if continued performance of the employment contract has become impossible, the Employer shall pay damages pursuant to Article 87 hereof.

Article 49

The state will take measures to establish a comprehensive system that enables Employees' social insurance accounts to be transferred from one region to another and to be continued in such other region.

Article 50

At the time of termination or ending of an employment contract, the Employer shall issue a proof of termination or ending of the employment contract and, within 15 days, carry out the procedures for the transfer of the Employee's file and social insurance account.

The Employee shall carry out the procedures for the handover of his work as agreed by the parties. If relevant provisions of this Law require the Employer to pay severance pay, it shall pay the same upon completion of the procedures for the handover of the work.

The Employer shall keep terminated or ended employment contracts on file for not less than two years, for reference purposes.

CHAPTER 5 SPECIAL PROVISIONS

SECTION 1 COLLECTIVE CONTRACT

Article 51

After bargaining on an equal basis, enterprise employees, as one party, and their Employer may conclude a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.

A collective contract shall be concluded by the Trade union, on behalf of the enterprise's employees, and the Employer. If the Employer does not yet have a Trade union, it shall

1 Translator's note: The phrase "of the area" does not appear in the Chinese text. It has been added by us in view of the context.

Conclude the collective contract with a representative put forward by the Employees under the guidance of the Trade union at the next higher level.

Article 52

Enterprise employees, as one party, and their Employer may enter into specialized collective contracts addressing labor safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

Article 53

Industry-wide or area-wide collective contracts may be concluded between the Trade union on the one hand and representatives on the side of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the county level.

Article 54

After a collective contract has been concluded, it shall be submitted to the labor administration

authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labor administration authority, unless the said authority raises any objections to the contract.

A collective contract that has been concluded in accordance with the law is binding on the Employer and the Employees. An industry-wide or area-wide collective contract is binding on Employers and Employees in the industry or in the area in the locality concerned.

Article 55

The rates for labor compensation, standards for working conditions, etc. stipulated in a collective contract may not be lower than the minimum rates and standards prescribed by the local People's Government. The rates for labor compensation, standards for working conditions, etc. stipulated in the employment contract between an Employer and a Employee may not be lower than those stipulated in the collective contract.

Article 56

If an Employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the Trade union may, in accordance with the law, demand that the Employer assume liability. If a dispute arising from the performance of the collective contract is not resolved following consultations, the Trade union may apply for arbitration and institute an action according to law.

SECTION 2 Placement

Article 57

Staffing firms shall be established in accordance with the relevant provisions of the Company Law and have registered capital of not less than RMB ¥500,000.

Article 58

Staffing firms are Employers as mentioned in this Law and shall perform an Employer's obligations toward its Employees. The employment contract between a staffing firm and a Employee to be placed shall, in addition to the matters specified in Article 17 hereof, specify matters such as the unit with which the Employee will be placed, the term of his placement, his position, etc.

The employment contracts between staffing firms and the Employees to be placed shall be fixed term employment contracts with a term of not less than two years. Staffing firms shall pay labor compensation on a monthly basis. During periods when there is no work for Employees to be placed, the staffing firm shall pay such Employees compensation on a monthly basis at the minimum wage rate prescribed by the People's Government of the place where the staffing firm is located.

Article 59

When placing Employees, staffing firms shall enter into staffing agreements with the units that accept the Employees under the placement arrangements ("Accepting Units"). The staffing agreements shall stipulate the job positions in which Employees are placed, the number of persons

placed, the term of placement, the amounts and methods of payments of labor compensation and social insurance premiums, and the liability for breach of the agreement.

An Accepting Unit shall decide with the staffing firm on the term of placement based on the actual requirements of the job position, and it may not conclude several short-term placement agreements to cover a continuous term of labor use.

Article 60

Staffing firms shall inform the Employees placed of the content of the placement agreements.

Staffing firms may not pocket part of the labor compensation that the Accepting Units pay to the Employees in accordance with the placement agreement.

Staffing firms and the Accepting Units may not charge fees from the Employees placed.

Article 61

If a staffing firm places a Employee with an Accepting Unit in another region, the Employee's labor compensation and working conditions shall be in line with the rates and standards of the place where the Accepting Unit is located.

Article 62

Accepting Units shall perform the following obligations:

- (1) Implement state labor standards and provide the corresponding working conditions and labor protection;
- (2) communicate the job requirements and labor compensation of the Employees placed;
- (3) Pay overtime pay and performance bonuses and provide benefits appropriate for the job positions;
- (4) Provide the placed Employees who are on the job with the training necessary for their job positions; and
- (5) In case of continuous placement, implement a normal wage adjustment system.

Accepting Units may not in turn place the Employees with other Employers.

Article 63

Placed Employees shall have the right to receive the same pay as that received by Employees of the Accepting Unit for the same work. If an Accepting Unit has no Employee in the same position, the labor compensation shall be determined with reference to the labor compensation paid in the place where the Accepting Unit is located to Employees in the same or a similar position.

Article 64

Placed Employees have the right to lawfully join the Trade union of their staffing firm or the Accepting Unit or to organize such unions, so as to protect their own lawful rights and interests.

Article 65

Placed Employees may terminate their employment contracts with their staffing firms pursuant to Article 36 or 38 hereof.

If any of the circumstances provided for in Article 39 and items (1) and (2) of Article 40 hereof applies to a placed Employee, his Accepting Unit may return him to the staffing firm, which may

terminate its employment contract with him in accordance with the relevant provisions of this Law.

Article 66

The placement of Employees shall generally be practiced for temporary, auxiliary or substitute job positions.

Article 67

Employers may not establish staffing firms to place Employees with themselves or their subordinate units.

Section 3 Part-Time Labor

Article 68

The term “part-time labor” means a form of labor for which the compensation is chiefly calculated by the hour and where the Employee generally averages not more than 4 hours of work per day and not more than an aggregate 24 hours of work per week for the same Employer.

Article 69

The two parties to part-time labor may conclude an oral agreement.

A Employee who engages in part-time labor may conclude an employment contract with one or more Employers, but a subsequently concluded employment contract may not prejudice the performance of a previously concluded employment contract.

Article 70

The two parties to part-time labor may not stipulate a probation period.

Article 71

Either of the two parties to part-time labor may terminate the use of the labor by notice to the other party at any time. No severance pay shall be payable by the Employer to the Employee upon termination of the use of the labor.

Article 72

The hourly compensation rate for part-time labor may not be lower than the minimum hourly wage rate prescribed by the People’s Government of the place where the Employer is located.

The labor compensation settlement and payment cycle for part-time labor may not exceed 15 days.

CHAPTER 6 MONITORING INSPECTIONS

Article 73

The State Council’s labor administration authority shall be responsible for overseeing the implementation of the employment contract system nationwide. The labor administration authorities of local People’s Governments at the county level and above shall be responsible for overseeing the implementation of the employment contract system in their respective jurisdictions. In the course of overseeing the implementation of the employment contract system, the labor administration authorities of People’s Governments at the county level and above shall consider

the opinions of the Trade unions, the representatives on the side of the enterprises and the authorities in charge of the industries concerned.

Article 74

The labor administration authorities of local People's Governments at the county level and above shall conduct monitoring inspections of the implementation of the following aspects of the employment contract system, in accordance with the law:

- (1) Employers' formulation of rules and regulations that have a direct bearing on the immediate interests of Employees, and the implementation thereof;
- (2) The conclusion and termination of employment contracts by Employers and Employees;
- (3) Compliance with relevant regulations on placement by staffing firms and Accepting Units;
- (4) Employers' compliance with state regulations on Employees' working hours, rest and leave;
- (5) Employers' payment of labor compensation as specified in the employment contracts and compliance with minimum wage rates;
- (6) Employers' enrollment in the various types of social insurance and payment of social insurance premiums; and
- (7) Other labor matters requiring monitoring inspections, as specified in laws and administrative statutes.

Article 75

When the labor administration authority of a local People's Government at the county level or above conducts a monitoring inspection, it has the authority to review materials relating to the employment contracts and collective contracts and conduct an on-the-spot inspection of the work premises. Both the Employer and the Employees shall truthfully provide relevant information and materials.

When working personnel of a labor administration authority conduct a monitoring inspection, they shall show their IDs, exercise their functions and powers according to law and enforce the law in a well-disciplined manner.

Article 76

Such competent authorities as construction authorities, health authorities, production safety regulators, etc. of People's Governments at the county level and above shall, to the extent of their respective purviews, oversee the implementation of the employment contract system by Employers.

Article 77

A Employee whose lawful rights and interests have been infringed upon shall have the right to request that the relevant authority deal with the infringement according to law, or to apply for arbitration and institute an action according to law.

Article 78

Trade unions shall safeguard the lawful rights and interests of Employees in accordance with the law and monitor the performance of the employment contracts and collective contracts by Employers. If an Employer violates labor laws or statutes or breaches an employment contract or

collective contract, the Trade union has the right to voice its opinion or require that the matter be rectified. If a Employee applies for arbitration or institutes an action, the Trade union shall provide support and assistance in accordance with the law.

Article 79

All organizations and individuals are entitled to report violations of this Law.

The labor administration authorities of People's Governments at the county level and above shall timely check and handle the violations reported and reward those persons whose reports are valuable.

CHAPTER 7 LEGAL LIABILITY

Article 80

If an Employer's rule or regulation with a direct bearing on the immediate interests of Employees violates laws or administrative statutes, the labor administration authority shall order rectification and give a warning. If the said rule or regulation caused a Employee to suffer harm, the Employer will be liable for damages.

Article 81

If the text of an employment contract provided by an Employer lacks any of the mandatory clauses which this Law requires to be included in such contracts or if an Employer fails to deliver the text of the employment contract to the Employee, the labor administration authority shall order rectification; if the Employee suffered harm as a result thereof, the Employer will be liable for damages.

Article 82

If an Employer concludes a written employment contract with a Employee more than one month but less than one year after the date on which it started using him, it shall each month pay to the Employee twice his wage.

If an Employer fails, in violation of this Law, to conclude an open-ended employment contract with a Employee, it shall each month pay to the Employee twice his wage, starting from the date on which an open-ended employment contract should have been concluded.

Article 83

If the probation period stipulated by an Employer with a Employee violates this Law, the labor administration authority shall order rectification. If the illegally stipulated probation has been performed, the Employer shall pay compensation to the Employee according to the time worked on probation beyond the statutory probation period, at the rate of the Employee's monthly wage following the completion of his probation.

Article 84

If an Employer violates this Law by retaining a Employee's resident ID card or other papers, the labor administration authority shall order the same returned to the Employee within a specified period of time and impose a penalty in accordance with the provisions of relevant laws.

If an Employer violates this Law by collection property from Employees as security or under some other guise, the labor administration authority shall order the same returned to the Employees within a specified period of time and impose a fine on the Employer of not less than RMB ¥500 and not more than RMB ¥2,000 for each person; If the Employees suffered harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages. If an Employer retains a Employee's file or other Article after the Employee has terminated or ended his employment contract in accordance with the law, a penalty shall be imposed in accordance with the preceding paragraph.

Article 85

If an Employer:

- (1) Fails to pay a Employee his labor compensation in full and on time as stipulated in his employment contract or prescribed by the state;
- (2) Pays labor compensation below the local minimum wage rate;
- (3) Arranges overtime without paying overtime pay; or
- (4) Terminates or ends an employment contract without paying the Employee severance pay pursuant to this Law; then the labor administration authority shall order it to pay the labor compensation, overtime pay or severance pay within a specified period of time; if the labor compensation is lower than the local minimum wage rate, the Employer shall pay the shortfall. If payment is not made within the time limit, the Employer shall be ordered to additionally pay damages to the Employee at a rate of not less than 50 percent and not more than 100 percent of the amount payable.

Article 86

If an employment contract is confirmed as being invalid in accordance with Article 26 hereof and the other party suffers harm as a result thereof, the party at fault shall be liable for damages.

Article 87

If an Employer terminates or ends an employment contract in violation of this Law, it shall pay damages to the Employee at twice the rate of the severance pay provided for in Article 47 hereof.

Article 88

If an Employer:

- (1) uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work;
- (2) Instructs in violation of rules and regulations, or peremptorily orders, a Employee to perform dangerous operations which threaten his personal safety;
- (3) Insults, corporally punishes, beats, illegally searches or detains a Employee; or
- (4) provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of Employees; it shall be subjected to administrative punishment; if the said conduct constitutes a criminal offense, criminal liability shall be pursued according to law; if the Employee suffers harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

Article 89

If an Employer fails, in violation of this Law, to issue to a Employee a certificate evidencing the termination or ending of his employment contract, the labor administration authority shall order rectification. If the Employee suffers harm as a result of such failure, the Employer will be liable for damages.

Article 90

If a Employee terminates his employment contract in violation of this Law or breaches the confidentiality obligations or competition restrictions stipulated in his employment contract, and if such violation or breach causes his Employer to suffer loss, he will be liable for damages.

Article 91

If an Employer hires a Employee whose employment contract with another Employer has not yet been terminated or ended, causing the other Employer to suffer a loss, it shall be jointly and severally liable with the Employee for damages.

Article 92

If a staffing firm violates this Law, the labor administration authority and other relevant competent authorities shall order it to rectify the situation. If the circumstances are serious, it shall impose a fine of not less than RMB ¥1,000 and not more than RMB ¥5,000 for each person, and the administration for industry and commerce shall revoke the business license. If the Employee(s) placed suffer(s) harm, the staffing firm and the Accepting Unit shall be jointly and severally liable for damages.

Article 93

An Employer that carries on business without the legal qualifications therefore will be pursued according to law for its legal liability for its illegal and criminal acts. If its Employees have already performed labor, the Employer or its investor(s) shall pay them labor compensation, severance pays and damages in accordance with the relevant provisions of this Law. If the Employees suffer harm as a result thereof, the said unit shall be liable for damages.

Article 94

If an individual that contracts for the operation of a business hires Employees in violation of this Law and a Employee suffers harm as a result thereof, the organization that employed such contractor shall be jointly and severally liable with the contractor for damages.

Article 95

If a labor administration authority, another competent authority or a member of its working personnel neglects its/his duties, fails to perform its/his statutory duties or exercises its/his authority in violation of the law, thereby causing harm to a Employee or an Employer, liability for damages shall be borne and the leading official directly in charge and the other persons directly responsible shall be subjected to administrative penalties in accordance with the law; if a criminal offense is constituted, criminal liability shall be pursued in accordance with the law.

CHAPTER 8 SUPPLEMENTARY PROVISIONS

Article 96

Where laws or administrative statutes contain, or the State Council has formulated, separate regulations concerning the conclusion, performance, amendment, termination or ending of employment contracts by and between institutions and those of their working personnel that are subject to the employment system, matters shall be handled in accordance with such regulations; in the absence of such regulations, matters shall be handled in accordance with this Law.

Article 97

Employment contracts concluded in accordance with the law before the implementation of this Law and continuing to exist on the implementation date of this Law shall continue to be performed. For the purposes of item (3) of the second paragraph of Article 14 hereof, the number of consecutive occasions on which a fixed-term employment contract is concluded shall be counted from the first renewal of such contract to occur after the implementation of this Law.

If an employment relationship was established prior to the implementation of this Law without the conclusion of a written employment contract, such contract shall be concluded within one month from the implementation date of this Law.

If an employment contract existing on the implementation date of this Law is terminated or ends after the implementation of this Law and, pursuant to Article 46 hereof, severance pay is payable, the number of years for which severance pay is payable shall be counted from the implementation date of this Law. If, under relevant regulations in effect prior to the implementation of this Law, the Employee is entitled to severance pay from the Employer in respect of a period preceding the implementation of this Law, the matter shall be handled in accordance with the relevant regulations that were in effect at that time.

Article 98

This Law shall be implemented from January 1, 2008.

Arbitration Law of the People's Republic of China



(Adopted by the 9th Meeting of the Standing Committee of the eighth National People's Congress on October 31, 1994; And promulgated by the Order No.31 of the President of the People's Republic of China on October 31, 1994)

Chapter One General Provisions

Article 1 The law is formulated with a view to ensure fair and timely arbitration of economic disputes, reliable protection to legitimate rights and interests of parties concerned and a healthy development of the socialist market economy.

Article 2 Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.

Article 3 The following disputes cannot be put to arbitration:

- (1) Disputes arising from marriage, adoption, guardianship, bringing up of children and inheritance.
- (2) Disputes that have been stipulated by law to be settled by administrative organs.

Article 4 In settling disputes through arbitration, an agreement to engage in arbitration should first of all be reached by parties concerned upon free will.

Without such an agreement, the arbitration commission shall refuse to accept the application for arbitration by any one single party.

Article 5 Whereas the parties concerned have reached an agreement for arbitration, the people's court shall not accept the suit brought to the court by any one single party involved, except in case where the agreement for arbitration is invalid.

Article 6 The members of the arbitration commission shall be chosen by the parties concerned. Arbitration shall not be subject to the jurisdiction of administrative departments at any level and region.

Article 7 Arbitration shall be made based on true facts and relative laws to give out a fair and reasonable settlement for parties concerned.

Article 8 Arbitration shall be conducted independently according to law, free from interference of administrative organs, social groups or individuals.

Article 9 The arbitration award is final. After the award is given, the arbitration commission or the people's court shall not accept the re- application of the suit concerning the same dispute by any of the parties concerned.

Whereas the award cancelled or put in void under a rule by the people's court, the parties concerned for the dispute may reach another agreement for arbitration and apply for arbitration or

bring a suit in the people's court.

Chapter Two Arbitration Commission and Arbitration Association

Article 10 An arbitration commission may be set up in the domicile of the people's governments of municipalities under the direct jurisdiction of the central government (hereinafter referred to as "municipalities"), provinces and autonomous regions or in other places according to needs. It shall not be set up according to administrative levels.

An arbitration commission shall be set up by the relevant departments and chambers of commerce under the coordination of the people's governments of the cities prescribed in the preceding paragraph.

The establishment of an arbitration commission shall be registered with the judicial administrative departments of provinces, autonomous regions and municipalities.

Article 11 An arbitration commission shall meet the following requirements:

- (1) It shall have its own name, residence and statute.
- (2) It shall have necessary property.
- (3) It shall have its own members.
- (4) It shall have appointed arbitrators.

The statute of an arbitration commission shall be formulated according to this law.

Article 12 An arbitration commission shall be composed of a chairman, two to four vice-chairmen and 7 to 11 members.

The chairman, vice-chairmen and members of an arbitration commission shall be experts in law and economy and trade with practical work experience. Of the composition of an arbitration commission, experts in law, economy and trade shall be no less than two-thirds.

Article 13 Members of an arbitration commission shall be appointed from among the people who are fair and justice.

An arbitrator shall meet one of the following requirements:

- (1) At least eight years of work experience in arbitration.
- (2) At least eight years of experience as a lawyer.
- (3) At least eight years of experience as a judge.
- (4) Engaging in law research and teaching, with a senior academic title.

An arbitration commission shall prepare the list of arbitrators according to different specialities.

Article 14 An arbitration commission shall be independent of any administrative organ, without any subordinate relationship with administrative organs.

Neither would there be any subordinate relations thereof.

Article 15 The China Arbitration Association is an institutional legal person with all the separate arbitration commissions as its members. The statute of the China Arbitration Association shall be formulated by the national congress of the association.

The China Arbitration Association is a self-disciplinary organization for arbitration commissions

to supervise over the matters and their members and arbitrators therein.

The China Arbitration Association shall formulate arbitration rules according to this law and the civil procedure law.

Chapter Three Agreement for Arbitration

Article 16 An agreement for arbitration shall include the arbitration clauses stipulated in the contracts or other written agreements for arbitration reached before or after a dispute occurs.

An arbitration agreement shall contain the following:

- (1) The expression of application for arbitration.
- (2) Matters for arbitration.
- (3) The arbitration commission chosen.

Article 17 An agreement for arbitration shall be invalid in one of the following cases:

- (1) The matters agreed for arbitration exceed the scope of arbitration provided by law.
- (2) Agreements concluded by people being incapable or restricted in civil acts.
- (3) An agreement forced upon a party by the other party by means of coercion.

Article 18 Whereas an agreement for arbitration fails to specify or specify clearly matters concerning arbitration or the choice of arbitration commission, parties concerned may conclude a supplementary agreement. If a supplementary agreement cannot be reached, the agreement for arbitration is invalid.

Article 19 The effect of an agreement for arbitration shall stand independently and shall not be affected by the alteration, dissolution, termination or invalidity of a contract.

An arbitration tribunal has the right to establish the validity of a contract.

Article 20 Whereas parties concerned have doubt on the validity of an agreement for arbitration, a request can be made to the arbitration commission for a decision or to the people's court for a ruling.

If one party requests the arbitration commission for a decision while the other party requests the people's court for a ruling, the people's court shall pass a ruling.

A doubt to the effectiveness of an arbitration agreement, should be raised before the first hearing at the arbitration tribunal.

Chapter Four Arbitration Procedure

Section One Application and Acceptance

Article 21 The parties concerned should meet the following requirements in applying for arbitration:

- (1) There is an agreement for arbitration.
- (2) There are specific requests for arbitration and facts and reasons.
- (3) The matters to be put to arbitration shall fall into the limits of the authority of the arbitration

commission.

Article 22 In applying for arbitration, the parties concerned shall submit the agreement and the application for arbitration and their copies.

Article 23 The application for arbitration shall specify the following matters:

(1) Name, sex, age, profession, work unit and residence of parties concerned; the name, residence of legal persons or other organizations and the name and position of the legal representatives or principal leading members.

(2) The claimants's claim and the facts and evidence on which the claim is based.

(3) Evidence and sources of evidence and name and residence of witnesses.

Article 24 An arbitration commission shall accept the application within five days after the application is received if it deems the application conforming to requirements and notify the parties concerned. If it deems the application unconformable to requirements, it shall notify the parties concerned in writing and state the reasons.

Article 25 After an arbitration commission has accepted an arbitration application, it shall deliver the arbitration rules and the list of the panel of arbitrators to the claimant within the time limit prescribed in the arbitration rules and send the copies of the arbitration application and the arbitration rules and the list of the panel of arbitrators to the respondent.

After the respondent has received the copy of the application for arbitration, the aforesaid respondent shall file a counter-claim with the arbitration commission. After the arbitration commission has received the counter-claim of the respondent, it shall deliver the counter-claim to the claimant within the time limit set in the arbitration rules. If a respondent fails to submit a counter-claim, it does not affect the arbitration proceedings.

Article 26 When parties concerned have reached an agreement for arbitration but one party brings a suit in the people's court without notifying the court that there is an agreement for arbitration and, after the people's court has accepted the case, the other party submits the agreement for arbitration before the opening of the arbitration tribunal, the people's court shall reject the suit, except in the case that the agreement for arbitration is invalid. If the other party fails to raise objection to the acceptance of the case by the court before first hearing, it shall be regarded as having forfeited the agreement for arbitration and the people's court shall continue the hearing.

Article 27 A claimant may give up or alter its claims. The respondent may acknowledge or refute the claims and has the right to raise counter- claims.

Article 28 Whereas due to the acts of the other party or other reasons, the arbitration award cannot be or is hard to be executed, the parties concerned may apply for putting the property under custody.

Whereas a claimant has applied for a custody to the property, the arbitration commission shall, according to the relevant provisions of the Civil Procedure Law, submit the application of the claimant to the people's court.

Whereas there are errors in the application, the claimant shall compensate to the respondent for the losses arising from the custody to the property.

Article 29 The parties concerned or legal attorneys may entrust lawyers or other attorneys to handle matters relating to arbitration. In the case where lawyers or other attorneys are entrusted with the handling of arbitration matters, the attorneys shall produce a power of attorney to the arbitration commission.

Section TWO COMPOSITION OF ARBITRATION TRIBUNAL

Article 30 An arbitration tribunal may be composed of three arbitrators or one arbitrator. In the case of three arbitrators, there should be a chief arbitrator.

Article 31 Whereas the parties concerned agree that the arbitration tribunal is composed of three arbitrators, each of them shall choose one arbitrator or entrust the appointment to the chairman of the arbitration commission, with the third arbitrator jointly chosen by the parties concerned or appointed by the chairman of the arbitration commission jointly entrusted by the two parties. The third arbitrator shall be the chief arbitrator.

Whereas the parties concerned agree to have the arbitration tribunal composed of one arbitrator, the two parties shall jointly choose the arbitrator or entrust the choice of the arbitrator to the chairman of the arbitration commission.

Article 32 Whereas the parties concerned fail to decide on the composition of the arbitration tribunal or fail to choose arbitrators within the time limit prescribed in the arbitration rules, the chairman of the arbitration commission shall make the decision.

Article 33 After the formation of an arbitration tribunal, the arbitration commission shall notify in writing the composition of the arbitration tribunal matters.

Article 34 An arbitrator shall be withdrawn and the parties concerned have the right to request withdrawal, whereas:

- (1) The arbitrator is a party involved in the case or a blood relation or relative of the parties concerned or their attorneys.
- (2) the arbitrator has vital personal interests in the case.
- (3) the arbitrator has other relations with the parties or their attorneys involved in the case that might affect the fair ruling of the case.
- (4) the arbitrator meets the parties concerned or their attorneys in private or has accepted gifts or attended banquets hosted by the parties concerned or their attorneys.

Article 35 In requesting for withdrawal, the parties concerned shall state reasons before the first hearing of the tribunal. If the reasons are known only after the first hearing, they may be stated before the end of the last hearing.

Article 36 The withdrawal of an arbitrator shall be decided upon by the chairman of the arbitration

commission. Whereas the chairman of the arbitration commission serves as an arbitrator, the withdrawal shall be decided upon collectively by the arbitration commission.

Article 37 Whereas an arbitrator is withdrawn or unable to perform his duty due to other reasons, another arbitrator shall be chosen or appointed according to the relevant provisions of this law.

Whereas re-selection or re-appointment of an arbitrator is made due to withdrawal, the parties concerned may apply for the re-start of the arbitration proceedings, but the final decision shall be made by the arbitration tribunal. The arbitration tribunal may also make its own decision as to whether or not the arbitration proceedings will restart.

Article 38 Whereas a case provided for in 4. of Article 34 of this law is found with an arbitrator and the case is very serious or a case provided for in 6. of Article 58 of this law is found with an arbitrator, the arbitrator shall bear the legal responsibility according to law and the arbitration commission shall remove him from the panel of arbitrators.

Section Three Hearing and Ruling

Article 39 An arbitration tribunal shall hold oral hearings to hear a case. Whereas the parties concerned agree not to hold oral hearings, the arbitration tribunal may give the award based on the arbitration application, claims and counter-claims and other documents.

Article 40 The arbitration tribunal may not hear a case in open sessions. But when parties concerned agree to have the case heard in open sessions, the hearing may be held openly, except cases that involve State secrets.

Article 41 The arbitration commission shall notify the parties concerned the date of hearing within the time limit prescribed in the arbitration rules. With justifiable reasons, a party concerned may request the postponement of the hearing within the time limit set in the arbitration rules. Whether or not the hearing is postponed shall be decided upon by the arbitration tribunal.

Article 42 Whereas a claimant is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may be regarded as a withdrawal of claims.

Whereas a respondent is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may give the award by default.

Article 43 The parties concerned shall provide evidence to support their respective claims.

Whereas an arbitration tribunal deems it necessary to collect evidence, it may collect it on its own initiative.

Article 44 Whereas an arbitration tribunal deems it necessary to have the specialized issues appraised, it may submit them to the appraisal department chosen by the parties concerned by agreement or to the appraisal department designated by the arbitration tribunal.

At the request of the parties concerned or of the arbitration tribunal, the appraisal department shall send appraisers to the hearing. Parties concerned may, with the permission of the arbitration tribunal, raise questions to the appraisers.

Article 45 Evidence shall be produced during the course of hearing and the parties concerned may question or substantiate their evidence.

Article 46 Whereas evidences are vulnerable to be destroyed or missing and would be heard to be recovered, the parties concerned may apply to put the evidences on custody: When a party applies for custody of evidences, the arbitration commission shall submit the evidences of the party concerned to the people's court at the place where the evidences are obtained.

Article 47 The parties concerned have the right to debate during the process of hearing. At the end of the debate, the chief arbitrator or the sole arbitrator shall ask the parties concerned for the final statement.

Article 48 The arbitration tribunal shall record the hearings in writing. Whereas the parties concerned or other people involved in the arbitration find something in their statements left out in the recording or misrecorded, they have the right to apply for correction.

Whereas corrections are not made, the application shall be recorded. The written records of the hearings shall be signed or affixed with seals by the arbitrators, minute keepers, the parties concerned and other people participating in the arbitration.

Article 49 After the parties have applied for arbitration, they may reach reconciliation on their own initiative. Whereas a reconciliation agreement has been reached, a request may be made to the arbitration tribunal for an award based on the reconciliation agreement or the application for arbitration may be withdrawn.

Article 50 Whereas the parties concerned have gone back on their word after they have reached a reconciliation agreement, they may apply for arbitration according to the arbitration agreement.

Article 51 The arbitration tribunal may reconcile a case before passing the award. Whereas the parties concerned accept the reconciliation effort of their own accord, the arbitration tribunal may conduct the reconciliation. Should the reconciliation fail, the arbitration tribunal shall pass the ruling in time.

Whereas an agreement is reached through reconciliation, the arbitration tribunal shall compile the reconciliation document or make an award based on the results of the agreement. The document of reconciliation and the arbitral award are equally binding legally.

Article 52 The document of reconciliation shall specify the arbitration claims and the result of the agreement between the parties concerned. The document of reconciliation shall be signed by the arbitrator and affixed with the seal of the arbitration commission before being delivered to the parties concerned.

The document of reconciliation becomes legally binding immediately upon received by parties

concerned.

If any party concerned has gone back on his word after receiving the document of reconciliation, the arbitration tribunal shall make a timely ruling.

Article 53 An arbitral award shall be decided by the majority of the arbitrators and the views of the minority can be written down in the record. Whereas a majority vote cannot be reached, the award shall be decided based on the opinion of the chief arbitrator.

Article 54 The arbitral award shall specify the arbitration claims, facts in disputes, reasons for the award, result of the award, arbitration expenses and date of the award given. Whereas parties concerned object to the specification of the facts in dispute and reasons for the ruling, such specification and reasons may be omitted. The arbitral award shall be signed by arbitrators and affixed with the seals of the arbitration commission. An arbitrator holding differences of views may sign or may not sign the award.

Article 55 In arbitrating disputes, the arbitration tribunal may pass the ruling on part of the facts that have already been made clear.

Article 56 An arbitration tribunal should correct the errors involving context or computation and add things that have been omitted in the rulings in the arbitral award. The parties concerned may apply for correction with the arbitration tribunal within 30 days after the receipt of the award.

Article 57 The arbitral award takes legal effect upon its issuing.

Chapter Five Application for Canceling Arbitral Ruling

Article 58 If parties concerned have evidences to substantiate one of the following, they may apply for the cancellation of arbitral award with the intermediate people's court at the place where the arbitration commission resides.

(1) There is no agreement for arbitration.

(2) The matters ruled are out the scope of the agreement for arbitration or the limits of authority of an arbitration commission.

(3) The composition of the arbitration tribunal or the arbitration proceedings violate the legal proceedings.

(4) The evidences on which the ruling is based are forged.

(5) Things that have an impact on the impartiality of ruling have been discovered concealed by the opposite party.

(6) Arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

The people's court shall form a collegial bench to verify the case. Whereas one of the aforesaid cases should be found, arbitral award should be ordered to be cancelled by the court.

Whereas the people's court establishes that an arbitral award goes against the public interests, the award should be cancelled by the court.

Article 59 An application filed by the parties concerned for the cancellation of an arbitral award should be sent within six months starting from the date of receipt of the award.

Article 60 The people's court should rule to cancel the award or reject the application within two months after the application for cancellation of an award is received.

Article 61 After the people's court has accepted an application for the cancellation of an arbitral award and deems it necessary for the arbitration tribunal to make a new award, it shall notify the arbitration tribunal for a new ruling within a certain limit of time and order the termination of the cancellation procedure. In the case when the arbitration tribunal refuses a new ruling, the people's court shall rule that the cancellation procedure be restored.

Chapter Six Enforcement

Article 62 The parties concerned shall execute the arbitral award. If one of the parties refuses to execute the award, the other party may apply for enforcement with the people's court according to the relevant provisions of the Civil Procedure Law. The people's court with which the application is filed should enforce it.

Article 63 If the respondent has produced evidences to substantiate one of the following cases provided for in the second paragraph of Article 217 of the Civil Procedure Law, the award shall not be enforced after the verification by the collegiate bench of the people's court.

Article 64 Whereas one party applies for an enforcement while the other applies for a cancellation of an award, the people's court shall order the termination of the performance of the award. Whereas the people's court has ordered the cancellation of an award, it should also order the termination of performance of the award. Whereas an application for the cancellation of an award is rejected, the people's court shall order the restoration of the performance of the award.

Chapter Seven Special Provision on Arbitration Involving Foreign Interests

Article 65 The provisions in this Chapter apply to arbitration of disputes arising from foreign economic cooperation and trade, transportation and maritime matters. Matters not covered by this Chapter shall be handled according to other relevant provisions of this law.

Article 66 Foreign arbitration commissions may be formed by the China International Chamber of Commerce.

A foreign arbitration commission is composed of a chairman, a number of vice-chairmen and members.

The chairman, vice-chairmen and members of a foreign arbitration commission shall be appointed by the China International Chamber of Commerce.

Article 67 Members of a foreign arbitration commission may appoint arbitrators from among foreign nationals with specialized knowledge in law, economy and trade, science and technology.

Article 68 Whereas the parties involved in a foreign arbitration case apply for the custody of evidences, the foreign arbitration commission shall submit the application to the intermediate people's court at places where the evidences are produced.

Article 69 The foreign arbitration tribunal may write down its hearings on records or summary of records. The records shall be signed or affixed with the seals of the parties concerned and other people participating in the arbitration.

Article 70 Whereas the claimant has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the People's court shall form a collegiate bench to verify the facts and order the cancellation of the award.

Article 71 Whereas the respondent has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall form a collegiate bench to verify the facts and order the non-performance of the award.

Article 72 Whereas a party involved in a foreign arbitration case applies for the enforcement of the award that has taken legal effect, the party shall apply directly with a foreign law court with the jurisdiction for recognition and enforcement if the party that should implement the award or its property is not in the territory of the People's Republic of China.

Article 73 The rules for foreign arbitration shall be formulated by the China International Chamber of Commerce according to this law and the relevant provisions of the Civil Procedure Law.

Chapter Eight Supplementary Provisions

Article 74 Whereas there is a limited effective period for the arbitration stipulated in the law, the limit shall apply. Whereas there is not a limited effective period for the arbitration stipulated by the law, the provisions about limits for proceedings shall apply.

Article 75 Before the China Arbitration Association has formulated arbitration rules, arbitration commissions may formulate interim rules for arbitration according to this law and the relevant provisions of the Civil Procedure Law.

Article 76 Parties concerned shall pay arbitration fees according to provisions. The schedule of arbitration fees shall be submitted for approval by the pricing administrative department.

Article 77 The arbitration of labor disputes and disputes arising from the farm work contract inside the collective agricultural organizations shall be formulated separately.

Article 78 Whereas the relevant arbitration regulations formulated before the enforcement of this

law come into conflict with the provisions of this law, the provisions of this law shall prevail.

Article 79 The arbitration organization set up in cities where the people's governments of the municipalities, provinces and autonomous regions are located and other cities which have districts shall be reorganized according to the relevant provisions of this law. Those not reorganized shall be terminated in one year's time starting from the date of the implementation of this law.

Other arbitration organizations set up before the implementation of this law and are not in conformity to the provisions of this law shall be terminated starting from the date of the implementation of this law.

Article 80 The law shall be implemented starting from September 1, 1995.

Annex: Relevant Provisions of the Civil Procedure Law

Article 217 Whereas the party against whom the application is made provides evidences which have proved that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order not to perform the arbitration award:

- (1) The parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement for arbitration;
- (2) Matters proposed for arbitration are out of scope of the agreement for arbitration or the limits of authority of the arbitration agency;
- (3) The composition of the arbitration division or the procedure for arbitration is not in conformity with the legal procedure;
- (4) The main evidences are not sufficient to substantiate the facts;
- (5) There are errors in the cited law; or
- (6) The arbitrators committed acts of malpractice for personal benefits and perverted the law in the arbitration of the case.

Article 260 Whereas the person against whom the application is made provides evidences which prove that the arbitration award made by the foreign affairs arbitration agency of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order to stop the execution of the award:

- (1) The parties concerned have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement for arbitration;
- (2) The person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he is not held responsible;
- (3) The composition of the arbitration division or the procedure for arbitration is not in conformity with the rules of arbitration; or
- (4) Matters for arbitration are out of the scope of the agreement for arbitration or the limits of authority of the arbitration agency.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards^[1]

Done at New York, on 10 June 1958

Further information concerning this Convention, including information concerning ratification, accession and succession and concerning declarations and reservations, may be obtained through the Treaty Section of the United Nations Commission on International Trade Law, web site <http://www.uncitral.org>.

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 [2] and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 [3] shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable

recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Notes:

[1] In accordance with Article XII, the Convention came into force on 7 June 1959, the ninetieth day following the date of deposit with the Secretary-General of the United Nations of the third instrument of ratification or accession. The following States have deposited their instruments of ratification or accession (a) on the dates indicated:

Israel 5 January 1959

Morocco 12 February 1959(a)

United Arab Republic 9 March 1959 (a)

[2] League of Nations, Treaty Series, Vol. XXVII, p. 157; Vol. XXXI, p. 260; Vol. XXXV, p. 314; Vol. XXXIX, p. 190; Vol. XLV, p. 116; Vol. L, p. 161; Vol. LIX, p. 355; Vol. LXIX, p. 79; Vol. LXXII, p. 452; Vol. LXXXIII, p. 393; Vol. LXXXVIII, p. 312; Vol. XCVI, p. 190; Vol. C, p. 211; Vol. CIV, p. 499; Vol. CVII, p. 470; Vol. CXI, p. 403; Vol. CXVII, p. 55; Vol. CLVI, p. 185; Vol. CLXXXI, p. 356; Vol. CLXXXV, p. 372; Vol. CXCIII, p. 268, and Vol. CC, p. 500; and United Nations, Treaty Series, Vol. 117, p. 394; Vol. 261, p. 422, and Vol. 325

[3] League of Nations, Treaty Series, Vol. XCII, p. 301; Vol. XCVI, p. 205; Vol. C, p. 259; Vol. CIV, p. 526; Vol. CVII, p. 528; Vol. CXI, p. 414; Vol. CXVII, p. 303; Vol. CXXX, p. 457; Vol. CLVI, p. 210; Vol. CLXXXI, p. 389; Vol. CLXXXV, p. 391, and Vol. CXCIII, p. 269; and United Nations, Treaty Series, Vol. 122, p. 346; Vol. 134, p. 402; Vol. 269, p. 384, and Vol. 325